99th Congress
2d Session

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PROCEDURE AND GUIDELINES FOR IMPEACHMENT TRIALS IN THE UNITED STATES SENATE

(REVISED EDITION)

PREPARED PURSUANT TO SENATE RESOLUTION 439,
99TH CONGRESS, 2D SESSION

SUBMITTED BY SENATOR ROBERT C. BYRD AND
SENATOR ROBERT DOLE

BY

FLOYD M. RIDDICK, PARLIAMENTARIAN EMERITUS
OF THE UNITED STATES SENATE

AND

ROBERT B. DOVE, PARLIAMENTARIAN OF THE
UNITED STATES SENATE

AUGUST 15, 1986.—Ordered to be printed

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SENATE RESOLUTION 439

JUNE 26 (legislative day, JUNE 23), 1986

Mr. BYRD (for himself and Mr. DOLE) submitted the following resolution; which was referred to the Committee on Rules and Administration

AUGUST 12 (legislative day, AUGUST 11), 1986

Reported by Mr. MATHIAS, with an amendment and an amendment to the title

[Strike out all after the resolving clause and insert the part printed in italic]

AUGUST 15 (legislative day, AUGUST 11), 1986

Considered, amended, and agreed to

IN THE SENATE OF THE UNITED STATES.

Resolved, That there be printed a revised edition of Senate Document 93-102, 93d Congress, 2d Session, entitled "Procedure and Guidelines for Impeachment Trials in the United States Senate," as a Senate document and that there be printed, in addition to the usual number of copies of such document, such additional copies as are allowed to be printed under the limitations imposed by section 703 of title 44, United States Code.

Attest:

JO-ANNE L. COE,
Secretary.

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PROCEDURE AND GUIDELINES FOR IMPEACHMENT TRIALS IN THE UNITED STATES SENATE

I. CONSTITUTIONAL PROVISIONS

The provisions of the United States Constitution which apply specifically to impeachment are as follows:

Article I; Section 2, Clause 5

The House of Representatives . . . shall have the sole Power of Impeachment.

Article I; Section 3, Clauses 6 and 7

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Article II; Section 2, Clause 1

The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Article II; Section 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III; Section 2, Clause 3

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; . . .

II. RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS

I. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person and are directed to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to such notice.

II. When the managers of an impeachment shall be introduced at the bar of the Senate and shall signify that they are ready to exhibit articles of impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant at Arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against ——— ——— "; after which the articles shall be exhibited, and then the Presiding Officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock after noon of the day (Sunday excepted) following such presentation, or sooner if ordered by the Senate, proceed to the consideration of such articles and shall continue in session from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the Presiding Officer shall administer the oath hereinafter provided to the Members of the Senate then present and to the other Members of the Senate as they shall appear, whose duty it shall be to take the same.

IV. When the President of the United States or the Vice President of the United States, upon whom the powers and duties of the Office of President shall have devolved, shall be impeached, the Chief Justice of the United States shall preside; and in a case requiring the said Chief Justice to preside notice shall be given to him by the Presiding Officer of the Senate of the time and place fixed for the consideration of the articles of impeachment, as aforesaid, with a request to attend; and the said Chief Justice shall be administered the oath by the Presiding Officer of the Senate and shall preside over the Senate during the consideration of said articles and upon the trial of the person impeached therein.

V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

VI. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations which it may deem essential or conducive to the ends of justice. And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule on all questions of evidence including, but not limited to, questions of relevancy, materiality, and redundancy of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision without debate; or he may at his option, in the first instance, submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be taken in accordance with the Standing Rules of the Senate.

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the person impeached, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof, such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person impeached, or if that cannot conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the person impeached to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the person impeached, after service, shall fail to appear, either in person or by attorney, on the day so fixed thereof as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

IX. At 12:30 o'clock afternoon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer in the form following, viz: "I, ——— ———, do solemnly swear that the return made by me upon the process issued on the ———

——— day of ———, by the Senate of the United States, against ——— ——— is truly made, and that I have performed such service as therein described: So help me God." Which oath shall be entered at large on the records.

X. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing and the capacity in which he appears. If he do not appear, either personally or by agent or attorney, the same shall be recorded.

XI. That in the trial of any impeachment the Presiding Officer of the Senate, if the Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

XII. At 12:30 o'clock afternoon, or at such other hour as the Senate may order, of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of ——— ———, in the Senate Chamber.

XIII. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) 12 o'clock m.; and when the hour shall arrive, the Presiding Officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

XIV. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

XV. Counsel for the parties shall be admitted to appear and be heard upon an impeachment.

XVI. All motions, objections, requests, or applications whether relating to the procedure of the Senate or relating immediately to the trial (including questions with respect to admission of evidence or other questions arising during the trial) made by the parties or their counsel shall be addressed to the Presiding Officer only, and if he, or any Senator, shall require it, they shall be committed to writing, and read at the Secretary's table.

XVII. Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

XVIII. If a Senator is called as a witness, he shall be sworn, and give his testimony standing in his place.

XIX. If a Senator wishes a question to be put to a witness, or to a manager, or to counsel of the person impeached, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer. The parties or their counsel may interpose objections to witnesses answering questions propounded at the request of any Senator and the merits of any such objection may be argued by the parties or their counsel. Ruling on any such objection shall be made as provided in Rule VII. It shall not be in order for any Senator to engage in colloquy.

XX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record.

XXI. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour (unless the Senate otherwise orders) on each side.

XXII. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate upon application for that purpose), and the argument shall be opened and closed on the part of the House of Representatives.

XXIII. An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial. Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment unless the Senate adjourns for a period not to exceed one day or adjourns sine die. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the Members present, a judgment of acquittal shall be entered; but if the person impeached shall be convicted upon any such article by the votes of two-thirds of the Members present, the Senate may proceed to the consideration of such other matters as may be determined to be appropriate prior to pronouncing judgment. Upon pronouncing judgment, a certified copy of such judgment shall be deposited in the office of the Secretary of State. A motion to reconsider the vote by which any article of impeachment is sustained or rejected shall not be in order.

Form of putting the question on each article of impeachment

The Presiding Officer shall first state the question; thereafter each Senator, as his name is called, shall rise in his place and answer: guilty or not guilty.

XXIV. All the orders and decisions may be acted upon without objection, or, if objection is heard, the orders and decisions shall be voted on without debate by yeas and nays, which shall be entered on the record, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no Member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the Members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not on the final question on each article of impeachment.

XXV. Witnesses shall be sworn in the following form, viz: "You, ——— ———, do swear (or affirm, as the case may be) that the evidence you shall give in the case now pending between the United States and ——— ———, shall be the truth, the whole truth, and nothing but the truth: so help you God." Which oath shall be administered by the Secretary, or any other duly authorized person.

Form of a subpena to be issued on the application of the managers of the impeachment, or of the party impeached, or of his counsel

To ——— ———, greeting:

You and each of you are hereby commanded to appear before the Senate of the United States, on the —— day of ——, at the Senate Chamber in the city of Washington, then and there to testify your knowledge in the cause which is before the Senate in which the House of Representatives have impeached ——— ———.

Fail not.

Witness ——— ———, and Presiding Officer of the Senate, at the city of Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States the ——.

——— ———,
Presiding Officer of the Senate.

form of direction for the service of said subpena

The Senate of the United States to ——— ———, greeting:

You are hereby commanded to serve and return the within subpena according to law.

Dated at Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States the ——.

——— ———,
Secretary of the Senate.

Form of oath to be administered to the Members of the Senate and the Presiding Officer sitting in the trial of impeachments

"I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of ——— ———, now pending, I will do impartial justice according to the Constitution and laws: So help me God."

form of summons to be issued and served upon the person impeached

THE UNITED STATES OF AMERICA, ss:
The Senate of the United States to ——— ———, greeting:

Whereas the House of Representatives of the United States of America did, on the —— day of ——, exhibit to the Senate articles of impeachment against you, the said ——— ———, in the words following:

[Here insert the articles]

And demand that you, the said ——— ———, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice.

You, the said ——— ———, are therefore hereby summoned to be and appear before the Senate of the United States of America, at their Chamber in the city of Washington, on the —— day of ——, at —— o'clock ——, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness ——— ———, and Presiding Officer of the said Senate, at the city of Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States the ———.

——— ———,
Presiding Officer of the Senate.

form of precept to be indorsed on said writ of summons

THE UNITED STATES OF AMERICA, ss:
The Senate of the United States to ——— ———, greeting:

You are hereby commanded to deliver to and leave with ——— ———, if conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service, let it be done at least —— days before the appearance day mentioned in the said writ of summons.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon indorsed, on or before the appearance day mentioned in the said writ of summons.

Witness ——— ———, and Presiding Officer of the Senate, at the city of Washington, this —— day of —— in the year of our Lord ——, and of the Independence of the United States the ——.

——— ———,
Presiding Officer of the Senate.

All process shall be served by the Sergeant at Arms of the Senate, unless otherwise ordered by the Senate.

XXVI. If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, be an order to be adopted without debate, fix a day and hour for resuming such consideration.

III. SENATE RULES

Senate Legislative Rules Applicable When Impeachment Rules Are Silent:

On April 11, 1868, during the trial of President Johnson, objection was heard to a motion from the floor by a Senator and the Chief Justice ruled that objection forced a motion to lie over one day. At this point the following colloquy occurred:

> Mr. TRUMBULL. An objection does not carry it over, does it?
>
> The CHIEF JUSTICE. The Chair thinks it does.
>
> Mr. TRUMBULL. It does not change the rule. The rule provides for this very thing being done, if the Senate choose to allow it.
>
> Mr. CONKLING. Mr. President, may I inquire under what rule of the Senate thus organized it is that this motion lies over upon the objection of a single Senator?
>
> The CHIEF JUSTICE. The Chief Justice in conducting the business of the court adopts for his general guidance the rules of the Senate sitting in legislative session as far as they are applicable. That is the ground of his decision.

Likewise, a few days later, an order was sent to the Chair and objection was heard to its immediate consideration. The Chief Justice stated:

> Objection is made. The order will lie over for one day.
>
> Mr. SUMNER. I beg leave most respectfully to inquire under what rule such an objection can be made.
>
> The CHIEF JUSTICE. The Chief Justice stated on Saturday that in conducting the business of the court he applied, as far as they were applicable, the general rules of the Senate. This has been done upon several occasions, and when objection has been made orders have been laid over to the next day for consideration.

IV. SEQUENCE OF EVENTS AT THE BEGINNING OF A TRIAL[1]

1. First a Message(s) From the House of Representatives Is Received Containing the Information That the House Has Voted Impeachment, Adopted Articles, and Appointed Managers. The Senate Then Adopts an Order Informing the House When It Is Ready To Receive the Managers To Present the Articles of Impeachment

The procedures utilized by the House of Representatives in voting impeachment and adopting articles of impeachment have varied particularly as to time sequence,[1] and this of necessity has forced the Senate to vary in its preliminaries to getting an impeachment trial underway. However, the general procedure utilized by the Senate is illustrated below from the selected cases of the trial of Judge Halsted L. Ritter, Judge Harold Louderback, and President Andrew Johnson.

[The various procedures utilized by the House of Representatives in voting impeachment are illustrated by the following:

Trial of Halsted L. Ritter

On Monday, March 2, 1936, Mr. Sumners of Texas, by direction of the Committee on the Judiciary, called up the following privileged resolution (H. Res. 422):

> *Resolved,* That Halsted L. Ritter, who is a United States district judge for the southern district of Florida, be impeached for misbehavior, and for high crimes and misdemeanors; and that the evidence heretofore taken by the subcommittee of the Committee on the Judiciary of the House of Representatives under House Resolution 163 of the Seventy-third Congress sustains articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:
>
> Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Halsted L. Ritter, who was appointed, duly qualified, and commissioned to serve, during good behavior in office, as United States district judge for the southern district of Florida, on February 15, 1929. . . . (March 2, 1936, 74-2, *House Journal,* p. 193.)

The articles of impeachment followed in the body of the resolution, and a single vote was taken on the question of both impeachment and adoption of the articles.

This procedure in the House of Representatives for impeaching and adopting the articles of impeachment in a single resolution has been used since 1904 (see the case of Harold Louderback, February 24, 1933, 72-2, *House Journal,* p. 303; the case of George W. English, March 30, 1926, 69-1, *House Journal,* p. 434, in which a separate vote on article 1 of the articles, of impeachment was obtained; and the case of Robert W. Archbald, July 11, 1912, 62-2, *House Journal,* p. 854).

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[1] These steps basically follow the Ritter trial in 1936, but exceptions and collaborating information are also included in order to make it a general guide for any impeachment trial.

Prior to 1904, the impeachment process and their drafting of articles of impeachment and their adoption were all separate procedures.

In the case of William Blount, the House voted a resolution of impeachment on July 7, 1797 (July 7, 1797, 5-1, *House Journal,* p. 72). The committee to draft articles of impeachment was appointed the following day, July 8, 1797 (July 8, 1797, 5-1, *House Journal,* p. 96), and the articles of impeachment were agreed to January 29, 1798 (January 29, 1798, 5-2, *House Journal,* pp. 151-53). In the case of John Pickering, the House voted a resolution of impeachment on March 3, 1803 (March 3, 1803, 7-2, *House Journal,* p. 383). The committee was appointed to prepare articles of impeachment on October 20, 1803 (October 20, 1803, 8-1, *House Journal,* p. 411), and the articles of impeachment were agreed to December 30, 1803 (December 30, 1803, 8-1, *House Journal,* pp. 507-09). In the case of Samuel Chase, the House voted its resolution of impeachment on March 12, 1804 (March 12, 1804, 8-1, *House Journal,* p. 643). The committee was appointed to draft articles of impeachment on March 13, 1804 (March 13, 1804, 8-1, *House Journal,* p. 645), and the articles were agreed to December 4, 1804 (December 4, 1804, 8-2, *House Journal,* pp. 34-43). The resolution of impeachment of James H. Peck was voted in the House of Representatives April 24, 1830, and on the same day a committee was appointed to draft articles of impeachment (April 24, 1830, 21-1, *House Journal,* p. 565). The articles of impeachment were adopted May 1, 1830 (May 1, 1830, 21-1, *House Journal,* p. 592). The impeachment resolution of West H. Humphreys was agreed to May 6, 1862 (May 6, 1862, 37-2, *House Journal,* p. 646). The committee was appointed to prepare articles on May 14, 1862 (May 14, 1862, 37-2, *House Journal,* p. 684), and the articles of impeachment were agreed to on May 19, 1862 (May 19, 1862, 37-2, *House Journal,* p. 712). In the case of President Andrew Johnson, the House voted the resolution of impeachment February 24, 1868 (February 24, 1868, 40-2, *House Journal,* p. 392). The committee to draft articles of impeachment was appointed the same day (February 24, 1868, 40-2, *House Journal,* p. 393). The articles of impeachment were agreed to on March 2, 1868 (March 2, 1868, 40-2, *House Journal,* pp. 440-51). In the case of William W. Belknap, the resolution was voted in the House on March 2, 1876 (March 2, 1876, 44-1, *House Journal,* p. 496). The committee was appointed the same day (March 2, 1876, 44-1, *House Journal,* p. 496), and the articles of impeachment were agreed to April 3, 1876 (April 3, 1876, 44-1, *House Journal,* pp. 726-33). In the impeachment of Charles Swayne, a resolution of impeachment was agreed to in the House December 12, 1904 (December 12, 1904, 58-3, *House Journal,* p. 51). The committee to draft the articles was appointed the same day (December 12, 1904, 58-3, *House Journal,* p. 51). The articles of impeachment were agreed to January 18, 1905 (January 18, 1905, 58-3, *House Journal,* pp. 158-62).]

On Monday, March 9, 1936 (Legislative day of Monday, February 24, 1936), following the approval of the *Journal,* a message from the House of Representatives, by Mr. Haltigan, one of its reading clerks, informed the Senate that the House had impeached for high crimes and misdemeanors Halsted L. Ritter, United States district judge for the southern district of Florida, and that the House had adopted articles of impeachment against said Halsted L. Ritter, judge as aforesaid, which the managers on the part of the House had been directed to carry to the Senate, and that Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of the House, had been appointed such managers.[2]

The message, subsequently that day, was laid before the Senate by the Presiding Officer and an order was immediately adopted to inform the House that the Senate would receive managers at 1:00 p.m. on the following day to exhibit the articles of impeachment as follows:

> *Ordered,* That the Secretary inform the House of Representatives that the Senate is ready to receive the managers appointed by the House for the purpose of exhibiting articles of impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida, agreeably to the notice communicated to the Senate, and that at the hour of 1 o'clock p.m. on Tuesday, March 10, 1936, the Senate will receive the honorable managers on the part of the House of Representatives, in order that they may present and exhibit the said articles of impeachment against the said Halsted L. Ritter, United States district judge for the southern district of Florida.[3]

Trial of Harold Louderback

On Tuesday, February 28, 1933, during the consideration of a conference report, the following message from the House of Representatives was received:

> Mr. President: The House of Representatives has passed the following resolution (H. Res. 403), which I am directed to communicate to the Senate:
>
> *Resolved,* That a message be sent to the Senate to inform them that this House has impeached Harold Louderback, United States district judge for the northern district of California, for misdemeanors in office, and that the House has adopted articles of impeachment against said Harold Louderback, judge as a foresaid, which the managers on the part of the House have been directed to carry to the Senate, and that Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of this House, have been appointed such managers.[4]

Shortly after the message was received, the matter being laid before the Senate, an order was adopted to inform the House of Representatives that the Senate was ready to receive the managers to exhibit the articles of impeachment as follows:

> *Ordered,* That the Secretary inform the House of Representatives that the Senate is ready to receive the managers appointed by the House for the purpose of exhibiting articles of im-

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[2] March 9, 1936, 74-2, *Journal,* p. 473.

[3] *Senate Journal,* 74-2, March 9, 1936, p. 473.

[4] February 28, 1933, 72-2, *Journal.* p. 299.

peachment against Harold Louderback. United States district judge for the northern district of California, agreeably to the notice communicated to the Senate.[5]

Trial of Andrew Johnson

On Tuesday, February 25, 1868, during the morning business, the Senate received the following message from the House of Representatives:

> Mr. President: The House of Representatives has passed the following resolution, which I am directed to communicate to the Senate:
>
> *Resolved,* That a committee of two be appointed to go to the Senate, and, at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Andrew Johnson, President of the United States, of high crimes and misdemeanors in office, and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same; and that the committee do demand that the Senate take order for the appearance of said Andrew Johnson to answer to said impeachment.
>
> *Ordered,* That Mr. Thaddeus Stevens and Mr. John A. Bingham be appointed to such committee.[5a]

At this point the Senate continued with legislative business and while a Senator was addressing the Chair, the Sergeant at Arms announced a committee from the House of Representatives, Mr. Thaddeus Stevens and Mr. John A. Bingham, who appeared at the bar of the Senate and delivered the following message:

> Mr. President: By order of the House of Representatives we appear at the bar of the Senate, and in the name of the House of Representatives, and of all the people of the United States, we do impeach Andrew Johnson, President of the United States, of high crimes and misdemeanors in office; and we do further inform the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same; and in their name we do demand that the Senate take order for the appearance of the said Andrew Johnson to answer to said impeachment.

The President of the Senate pro tempore replied that the Senate would take order in the premises, and the committee withdrew.[6]

The above message was referred to a select committee which made a report on the following day, immediately after which the Senate adopted the following order making ready for receiving the articles of impeachment:

> Whereas the House of Representatives on the twenty-fifth day of the present month, by two of their members, Messrs. Thaddeus Stevens and John A. Bingham, at the bar of the Senate, impeached Andrew Johnson, President of the United States, of high crimes and misdemeanors in office; and informed the Senate that the House of Representatives will, in

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[5] February 28, 1933, 72-2, *Senate Journal,* p. 299.

[5a] February 25, 1868, 40-2, *Senate Journal,* p. 217.

[6] February 25, 1868, 40-2, *Journal,* p. 217.

> due time, exhibit particular articles of impeachment against him, and make good the same; and likewise demanded that the Senate take order for the appearance of said Andrew Johnson to answer to the said impeachment: Therefore,
>
> *Resolved,* That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives.[7]

There were slight variations from the above procedures in some of the other impeachment trials held by the Senate as set forth below.

[Briefly, the procedure for each of the other cases follows:

Trial of George W. English

On Tuesday, April 6, 1926 (Legislative day of April 5, 1926), during the consideration of a resolution declaring Daniel F. Steck to be the duly elected Senator from the State of Iowa, the following message from the House was received:

> Mr. President: The House of Representatives has passed the following resolution, which I am directed to communicate to the Senate:
>
> *Resolved,* That a message be sent to the Senate to inform them that this House has impeached George W. English, United States district judge for the Eastern District of Illinois, for misdemeanors in office, and that the House has adopted articles of impeachment against said George W. English, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate, and that Earl C. Michener, W. D. Boies, Ira G. Gersey, C. Ellis Moore, George R. Stobbs, Hatton W. Sumners, Andrew J. Montague, John N. Tilman, and Fred H. Dominick, Members of this House, have been appointed such managers.
>
> (April 5, 1926, 69–1, *Journal,* p. 268.)

Trial of Robert W. Archbald

On Saturday, July 13, 1912 (Legislative day of July 6, 1912), during the morning business, the Senate received the following message from the Chief Clerk of the House:

> Mr. President: The House of Representatives has passed the following resolution, which I am directed to communicate to the Senate:
>
> *Resolved,* That a message be sent to the Senate to inform them that this House has impeached, for high crimes and misdemeanors, Robert W. Archbald, circuit judge of the United States Commerce Court, and that the House adopted articles of impeachment against said Robert W. Archbald, judge as aforesaid, which the managers on the part of the House have been directed to carry to the Senate, and that Henry D. Clayton, of Alabama; Edwin Y. Webb, of North Carolina, John C. Floyd, of Arkansas; John W. Davis of West Virginia; John A. Sterling, of Illinois; Paul Howland, of Ohio; and George W. Norris, of Ne-

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[7] February 26, 1868, 40–2, *Senate Journal,* p. 794.

> braska, Members of this House, have been appointed such managers.

(July 6, 1912, 62-2, *Journal,* p. 452.)

Trial of Charles Swayne

On Wednesday, December 14, 1904, after consideration of bills on the Calendar under Rule VIII, the Senate received the following message from the House:

> Mr. President: The House of Representatives has passed the following resolution, which I am directed to communicate to the Senate:
>
> *Resolved,* That a committee of five be appointed to go to the Senate and, at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office, and to acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same, and that the committee do demand that the Senate take order for the appearance of said Charles Swayne to answer said impeachment.

The appointment of Mr. Palmer of Pennsylvania, Mr. Jenkins of Wisconsin, Mr. Gillett of California, Mr. Clayton of Alabama, and Mr. Smith of Kentucky, members of said committee by the Speaker was announced.

At this point the Sergeant at Arms announced the presence of the committee from the House of Representatives, and the following ensued:

> The President pro tempore. The Senate will receive the committee from the House of Representatives.

The committee from the House of Representatives was escorted by the Sergeant at Arms (D. M. Ransdell) to the area in front of the Vice President's desk, and its chairman, Mr. Palmer said:

> Mr. President, in obedience to the order of the House of Representatives we appear before you, and in the name of the House of Representatives and of all the people of the United States of America we do impeach Charles Swayne, judge of the district court of the United States for the northern district of Florida, of high crimes and misdemeanors in office; and we do further inform the Senate that the House of Representatives will in due time exhibit articles of impeachment against him and make good the same. And in their name we demand that the Senate shall take order for the appearance of the said Charles Swayne to answer the said impeachment.

The President pro tempore stated that the Senate would take proper order in the premises, notice of which would be given to the House.

The committee of the House of Representatives thereupon retired from the Chamber.

(December 14, 1904, 58-3, *Journal,* pp. 38-39.)

Trial of William W. Belknap

On Friday, March 3, 1876, following the introduction of bills and resolution, the following message from the House was presented:

> Mr. President: The House of Representatives has passed the following resolution, which I am directed to communicate to the Senate:
>
> *Resolved,* That a committee of five members of this House be appointed and instructed to proceed immediately to the bar of the Senate, and there impeach William W. Belknap, late Secretary of War, in the name of the House of Representatives and of all the people of the United States of America, of high crimes and misdemeanors while in office, and to inform that body that formal articles of impeachment will in due time be presented, and to request the Senate to take such order in the premises as they deem appropriate.
>
> *Ordered,* That Mr. Heister Clymer, Mr. William M. Robbins, Mr. Joseph C. S. Blackburn, Mr. Lyman K. Bass, and Mr. Lorenzo Danford be the committee aforesaid.

The committee aforesaid then proceeded to the bar of the Senate and delivered the following message:

> Mr. President: In obedience to the order of the House of Representatives we appear before you, and, in the name of the House of Representatives and of all the people of the United States of America, we do impeach William W. Belknap, late Secretary of War of the United States, of high crimes and misdemeanors in office; and we further inform the Senate that the House of Representatives will in due time exhibit articles of impeachment against him and make good the same; and, in their name, we demand that the Senate shall take order for the appearance of said William W. Belknap to answer said impeachment.

The President pro tempore replied that the Senate would take order in the premises; and the committee withdrew.

(March 3, 1876, 44-1, *Journal,* p. 271.)

Trial of West H. Humphreys

On Wednesday, May 7, 1862, during the consideration of legislative business, the following message from the House was announced:

> *Resolved,* That a committee of two be appointed to go to the Senate, and, at the bar thereof, in the name of the House of Representatives, and of all the people of the United States, to impeach West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, of high crimes and misdemeanors, and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same, and that the committee do demand that the Senate take order for the appearance of said West H. Humphreys to answer to said impeachment.

The Speaker, in accordance with the foregoing resolution, appointed Mr. John A. Bingham and Mr. George H. Pendleton the said committee.

The committee aforesaid then proceeded to the bar of the Senate to deliver the following message:

> Mr. President: By order of the House of Representatives we appear at the bar of the Senate, and in the name of the House of Representatives, and of the people of the United States, we do impeach West H. Humphreys, judge of the district court of the United States for the several districts of Tennessee, of high crimes and misdemeanors; and we do further inform the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same; and in their name we do demand that the Senate take order for the appearance of said West H. Humphreys to answer to said impeachment.

The President of the Senate replied that the Senate would take order in the premises, and the committee withdrew.

(May 7, 1862, 37-2, *Journal*, pp. 454-55.)

Trial of James H. Peck

On Monday, April 26, 1830, during the consideration of various legislation, the following message from the House of Representatives was announced by two of their members, Mr. Buchanan and Mr. Henry R. Storrs, as follows:

> Mr. President: We have been directed, in the name of the House of Representatives, and of all the people of the United States, to impeach James H. Peck, Judge of the District Court of the United States for the District of Missouri, of high misdemeanors in office; and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.
>
> We have also been directed to demand that the Senate take order for the appearance of said James H. Peck, to answer to said impeachment.

And they withdrew.

(April 26, 1830, 21-1, *Journal*, p. 269.)

Trial of Samuel Chase

On Tuesday, March 13, 1804, during the conduct of routine business, a message was received from the House of Representatives by Messrs. J. Randolph and Early, two of their members.

> Mr. President: We are ordered, in the name of the House of Representatives and of all the People of the United States, to impeach Samuel Chase, one of the associate justices of the Supreme Court of the United States, of high crimes and misdemeanors; and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.
>
> We are also ordered to demand that the Senate take order for the appearance of the said Samuel Chase, to answer to the said impeachment.

And they withdrew.

(March 13, 1804, 8-1, *Journal*, p. 374.)

Trial of John Pickering

On Thursday, March 3, 1803, during the conduct of legislative business, a message was received from the House of Representatives by Mr. Nicholson and Mr. Randolph, two of the members of said House, in the words following:

> Mr. President: We are commanded in the name of the House of Representatives and of all the people of the United States, to impeach John Pickering, judge of the district court of the district of New Hampshire, of high crimes and misdemeanors; and to acquaint the Senate, that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.
>
> We are further commanded, to demand that the Senate take order for the appearance of the said John Pickering to answer to the said impeachment.

And they withdrew.

(March 3, 1803, 7-2, *Journal*, p. 284.)

Trial of William Blount

On Friday, July 7, 1797, during the conduct of routine business, a message was received from the House of Representatives, by Mr. Sitgreaves, one of their members, in the words following:

> Mr. President: I am commanded, in the name of the House of Representatives, and of all the people of the United States, to impeach William Blount, a Senator of the United States, of high crimes and misdemeanors; and to acquaint the Senate, that the House of Representatives will in due time, exhibit particular articles against him, and make good the same.
>
> I am further commanded, to demand, that the said William Blount be sequestered from his seat in the Senate; and that the Senate do take order for his appearance, to answer the said impeachment.

And he withdrew.

(July 7, 1797, 5-1, *Journal*, p. 388.)]

2. IN SOME OF THE RECENT TRIALS, AT THIS STAGE OF THE PROCEEDINGS, THE SENATE HAS ADOPTED RESOLUTIONS TO PROVIDE FOR THE PAYMENT OF EXPENSES OF THE SAID TRIALS

In the trial of Halsted L. Ritter in 1936, the Senate adopted an initial resolution providing for $5,000,[8] and later adopted a supplemental resolution providing an additional $15,000 for such expenses.[9]

The form of such resolution is as follows:

> *Resolved,* That not to exceed $5,000 is authorized to be expended from the appropriation for miscellaneous items, contingent expenses of the Senate, to defray the expenses of the Senate in the impeachment trial of Halsted L. Ritter.[10]

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[8] March 9, 1936, 74-2, *Senate Journal*, p. 473.

[9] March 31, 1936, 74-2, *Senate Journal*, p. 483.

[10] March 9, 1936, 74-2, *Senate Journal*, p. 473.

In the trial of Judge Swayne in 1905, a joint resolution providing for direct appropriations from the Treasury was passed to defray the expenses of the Senate in the impeachment trial.[11]

3. MANAGERS ON THE PART OF THE HOUSE OF REPRESENTATIVES APPEAR IN THE SENATE CHAMBER AND ARE ANNOUNCED. THE PRESIDING OFFICER DIRECTS THEM TO THE SEATS PROVIDED FOR THEM AND THE SERGEANT AT ARMS MAKES HIS PROCLAMATION. THE CHAIR RECOGNIZES THE MANAGERS TO PRESENT THE ARTICLES OF IMPEACHMENT, FOLLOWING A QUORUM CALL IF ONE IS CALLED FOR

In the trials of Judge Ritter, Judge Louderback, and President Johnson, this procedure was as follows:

Trial of Halsted L. Ritter

On Monday, February 24 (Calendar day, Tuesday, March 10), 1936, at 1 o'clock p.m., the secretary for the majority announced the presence in the Senate Chamber of the managers appointed by the House of Representatives, to wit, Mr. Hatton W. Sumners, Mr. Randolph Perkins, and Mr. Sam Hobbs, the conduct the impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida, and they were assigned to seats provided for them.

The Vice President directed the Sergeant at Arms to make proclamation; and the Sergeant at Arms thereupon made proclamation in the following words:

> Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida.

Mr. Robinson raised a question as to the presence of a quorum, whereupon the Vice President directed the roll to be called, when eight-six Senators answered to their names.

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A quorum being present, Mr. Sumners, as chairman, announced that the managers on the part of the House were present and ready to exhibit articles of impeachment preferred by the House against Halsted L. Ritter, United States district judge for the southern district of Florida, and he read the resolution received on yesterday from the House of Representatives, appointing the managers to conduct the impeachment against the said Halsted L. Ritter and instructing them to appear before the Senate and demand his impeachment and trial.

Mr. Hobbs, one of the managers on the part of the House, then read the articles of impeachment:[12]

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[11] January 24, 1905, 58-3, *Record*, p. 1289; January 24, 1905, 58-3, *Journal*, p. 119, signed by President Jan. 31, 1905; Feb. 7, 1905, 58-3, *Journal*, p. 175.

[12] March 10, 1936, 74-2, *Journal*, p. 473.

Trial of Harold Louderback

On Friday, March 3, 1933, at 12 o'clock and 20 minutes p.m., the assistant doorkeeper announced the presence in the Senate Chamber of the managers appointed by the House of Representatives, to wit, Mr. Sumners, Mr. Browning, Mr. Tarver, Mr. LaGuardia, and Mr. Sparks, to conduct the impeachment against Harold Louderback, United States district judge for the northern district of California, and they were assigned to seats provided for them.

Mr. Sumners announced that the managers on the part of the House were presented to exhibit articles of impeachment preferred by the House against Harold Louderback, United States district judge for the northern district of California.

The Vice President then directed the Deputy Sergeant at Arms to make proclamation; and the Deputy Sergeant at Arms having made proclamation in the following words:

> Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Harold Louderback, United States district judge for the northern district of California.

Mr. Sumners as chairman, read the resolution received from the House of Representatives on February 28, 1933, appointing the managers to conduct the impeachment against the said Harold Louderback, and instructing them to appear before the Senate and demand his impeachment and trial.

Mr. Browning, one of the managers on the part of the House, read the articles of impeachment.[13]

Trial of Andrew Johnson

On Wednesday, March 4, 1868, at 1 o'clock p.m., the Sergeant at Arms announced the presence at the door of the Senate Chamber of the managers appointed by the House of Representatives, to wit: Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, to conduct the impeachment against Andrew Johnson, President of the United States.

The President pro tempore requested the managers to take the seats assigned them within the bar of the Senate.

Mr. Bingham rose and announced, on the part of the managers, that they were ready to exhibit, on the part of the House of Representatives, articles of impeachment against Andrew Johnson, President of the United States.

The President pro tempore then directed the Sergeant at Arms to make proclamation; and the Sergeant at Arms having made proclamation in the following words:

> Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Andrew Johnson, President of the United States.

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[13] March 3, 1933, 72-2, *Journal*, pp. 283-84.

The managers rose, and Mr. Bingham, their chairman, read the articles.[14]

There were slight variations in the above procedures in some of the other impeachment trials held by the Senate, set forth below. [Briefly, the procedure for each of the other cases follows:

Trial of George W. English

On Monday, April 19, 1926, at 2 o'clock, the assistant doorkeeper announced the presence in the Senate Chamber of the managers appointed by the House of Representatives, to wit, Mr. Michener, Mr. Boies, Mr. Hersey, Mr. Moore, Mr. Stobbs, Mr. Sumners, Mr. Montague, Mr. Tillman, and Mr. Dominick, to conduct the impeachment against George W. English, United States district judge for the eastern district of Illinois, and they were assigned to seats provided for them.

Mr. Michener announced that the managers on the part of the House were ready to exhibit the articles of impeachment adopted by the House against George W. English, United States distrcit judge for the eastern district of Illinois.

The Vice President then directed the Sergeant at Arms to make proclamation; and the Sergeant at Arms having made proclamation in the following words:

> Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against George W. English, United States district judge for the eastern district of Illinois.

The managers arose, and Mr. Michener, their chairman, thereupon read the articles of impeachment.

(April 19, 1926, 691-1, *Journal,* p. 336.)

Trial of Robert W. Archbald

On Monday, July 15, 1912, at 12 o'clock and 15 minutes p.m., the Sergeant at Arms announced the presence in the Senate Chamber of the managers appointed by the House of Representatives, to wit, Mr. Clayton, Mr. Webb, Mr. Floyd, Mr. Davis of West Virginia, Mr. Sterling, Mr. Howland, and Mr. Norris, to conduct the impeachment against Robert W. Archbald, circuit judge of the United States and designated as a judge of the United States Commerce Court.

Mr. Clayton announced on the part of the managers that they were ready to exhibit, on the part of the House of Representatives, articles of impeachment against Robert W Archbald, circuit judge of the United States and designated as a judge of the United States Commerce Court.

The President pro tempore then directed the Sergeant at Arms to make proclamation; and the Sergeant at Arms having made proclamation in the following words:

> Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States ar-

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[14] March 4, 1868, 40-2, *Journal,* p. 800.

ticles of impeachment against Robert W. Archbald, circuit judge of the United States and designated as a judge of the United States Commerce Court.

The managers arose, and Mr. Clayton, their chairman, read the articles of impeachment.

(July 15, 1912, 62-2, *Journal,* p. 454.)

Trial of Charles Swayne

On Tuesday, January 24, 1905, at 12 o'clock and 30 minutes p.m., the Sergeant at Arms announced the presence in the Senate Chamber of the managers appointed by the House of Representatives, to wit, Mr. Palmer, Mr. Perkins, Mr. Clayton, Mr. DeArmond, and Mr. Smith of Kentucky to conduct the impeachment against Charles Swayne, judge of the district court of the United States in and for the northern district of the State of Florida.

The President pro tempore requested the managers to take the seats assigned them within the bar of the Senate.

Mr. Palmer rose and announced on the part of the managers that they were ready to exhibit, on the part of the House of Representatives, articles of impeachment against Charles Swayne, judge of the district court of the United States in and for the northern district of the State of Florida.

The President pro tempore then directed the Sergeant at Arms to make proclamation; and the Sergeant at Arms having made proclamation in the following words:

> Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Charles Swayne, judge of the district court of the United States in and for the northern district of Florida.

The managers rose, and Mr. Palmer, their chairman, read the articles of impeachment.

(January 24, 1905, 58-3, *Journal,* p. 119.)

Trial of William W. Belknap

On Tuesday, April 4, 1876, at 1 o'clock and 25 minutes p.m., the Sergeant at Arms announced the presence in the Senate Chamber of the managers appointed by the House of Representatives, to wit: Mr. Lord, Mr. Knott, Mr. Lynde, Mr. McMahon, Mr. Jenks, Mr. Lapham, and Mr. Hoar, to conduct the impeachment against William W. Belknap, late Secretary of War.

The President pro tempore requested the managers to take the seats assigned them within the bar of the Senate.

Mr. Lord rose and announced, on the part of the managers, that they were ready to exhibit, on the part of the House of Representatives, articles of impeachment against William W. Belknap, late Secretary of War.

The President pro tempore then directed the Sergeant at Arms to make proclamation; and, the Sergeant at Arms having made proclamation in the following words:

> Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Rep-

> resentatives is exhibiting to the Senate of the United States articles of impeachment against William W. Belknap, late Secretary of War.

The managers rose, and Mr. Lord, their chairman, read the articles of impeachment.

(April 4, 1876, 44-1, *Journal*, pp. 900-01.)

Trial of West H. Humphreys

On Thursday, May 22, 1862, the managers appointed by the House of Representatives, to wit, Mr. Bingham, Mr. Pendleton, Mr. Train, and Mr. Dunlop, appeared and were admitted; and Mr. Bingham, their chairman, announced that they were instructed by the House of Representatives to exhibit certain articles of impeachment against West H. Humphreys, judge of the district court of the United States for the districts of Tennessee.

The Vice President requested the managers to take the seats asigned them within the bar, and directed the Sergeant at Arms to make proclamation as follows:

> Oyez! Oyez! Oyez! All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against West H. Humphreys, judge of the district court of the United States for the districts of Tennessee.

After which, the managers rose, and Mr. Bingham, their chairman, read the articles of impeachment.

(May 22, 1862, 37-2, *Journal*, p. 889.)

Trial of James H. Peck

On Tuesday, May 4, 1830, the managers on the part of the House of Representatives, viz: Messrs. Buchanan, Storrs, of New York, McDuffie, Spencer, and Wickliffe, appeared, and were admitted; and Mr. Buchanan, their chairman, having announced that they were the managers instructed by the House of Representatives to exhibit a certain article of impeachment against James H. Peck, Judge of the district court of the United States for the district of Missouri.

They were requested by the Vice President to take seats assigned them within the bar; and the Sergeant at Arms was directed to make proclamation in the words following:

> Oyez! Oyez! Oyez! All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against James H. Peck, Judge of the district court of the United States for the district of Missouri.

After which the managers rose, and Mr. Buchanan, their chairman, read the articles of impeachment.

(May 4, 1830, 21-2, *Journal*, p. 240.)

Trial of Samuel Chase

On Friday, December 7, 1804, the managers on the part of the House of Representatives, to wit: Messrs. John Randolph, Rodney, Nicholson, Early, Boyle, Nelson, and G.W. Campbell, were admitted; and Mr. Randolph, the chairman, announced "that they were the managers instructed by the House of Representatives to exhibit certain articles of impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States."

The managers were requested by the President to take seats assigned them within the bar, and the Sergeant at Arms was directed to make proclamation in the words following:

> Oyes! Oyes! Oyes! All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States.

After which the managers rose, and Mr. Randolph, their chairman, read the articles.

(December 7, 1804, 8-1, *Journal,* pp. 509-10.)

Trial of John Pickering

On Wednesday, January 4, 1804, the managers on the part of the House of Representatives, Messrs. Nicholson, Early, Rodney, Eustis, John Randolph, jun. Samuel L. Mitchill, George W. Campbell, Blackledge, Boyle, Joseph Clay, and Newton, were admitted; and Mr. Nicholson, the chairman, announced that they were the managers instructed by the House of Representatives to exhibit certain articles of impeachment against John Pickering, district judge of the distirct of New Hampshire.

They were requested by the President to take seats assigned them within the bar. The Sergeant at Arms was directed to make proclamation, in the words following:

> Oyes! Oyes! Oyes! All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the Nation is exhibiting to the Senate of the United States, sitting as a court of impeachments, articles of impeachment against John Pickering, judge of the district court of the district of New Hampshire.

The managers then rose, and Mr. Nicholson, their chairman, read the articles.

(January 4, 1804, 8-1, *Journal,* p. 495.)

Trial of William Blount

On Wednesday, February 7, 1798, a message was announced from the House of Representatives, by the managers on the part of the House of Representatives, Messrs. Sitgreaves, Bayard, Harper, Gordon, Pinckney, Dana, Sewall, Hosmer, Dennis, Evans, and Imlay, who, being introduced, Mr. Sitgreaves, their chairman, addressed the Senate as follows:

> Mr. Vice President: The House of Representatives having agreed upon articles, in maintenance of their impeachment against William Blount, for high crimes and misdemeanors, and having appointed on their part managers of the said impeachment, the managers have now the honor to attend the Senate, for the purpose of exhibiting the said articles.

The Vice President then ordered the Sergeant at Arms to proclaim silence, after which he notified the managers that the Senate were ready to hear the articles of impeachment; whereupon, the chairman of the managers read the articles of impeachment, and they were received from him at the bar by the Sergeant at Arms, and laid on the table.

The Vice President then informed the managers, that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives, and they withdrew. The Secretary then read the articles of impeachment. . . .

(February 7, 1798, 5-2, *Journal*, p. 435.)]

4. THE MANAGERS, AFTER PRESENTING THE ARTICLES OF IMPEACHMENT, ASKS THE SENATE TO TAKE ORDER FOR THE TRIAL, AND THE PRESIDING OFFICER INFORMS THE MANAGERS THAT THE SENATE WILL DULY INFORM THE HOUSE OF REPRESENTATIVES WHEN READY FOR THE TRIAL. THE MANAGERS AFTER DELIVERING THE ARTICLES OF IMPEACHMENT WITHDRAW FROM THE SENATE

In the trial of Judge Ritter and Judge Louderback, the *Journal* exhibits the procedure, as set forth below; but in the case of President Johnson, the President pro tempore merely announced "that the Senate would take proper order . . . ."[15]

> The reading of the articles of impeachment having been concluded, Mr. Sumners said:
>
> "Mr. President, the House of Representatives by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles of accusation or impeachment against the said Halsted L. Ritter, a district judge of the United States for the southern district of Florida, and also of replying to his answers which he shall make unto the articles preferred against him, and of offering proof to the same and every part thereof, and to all and every other article of accusation or impeachment which shall be exhibited by them as the case shall require, do demand that the said Halsted L. Ritter may be put to answer the misdemeanors in office which have been charged against him in the articles which have been exhibited to the Senate, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.
>
> "Mr. President, the managers on the part of the House of Representatives, in pursuance of the action of the House of Representatives by the adoption of the articles of impeachment which have just been read to the Senate, do now demand that the Senate take order for the appearance of said Halsted L. Ritter to answer said impeachment, and do now demand his impeachment, conviction, and removal from office."
>
> The Vice President informed the managers that the Senate would take proper order in the matter of the impeachment, and that notice would be given to the House of Representatives.

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[15] March 2, 1868, 40-2, *Senate Journal*, p. 807.

The managers, by their chairman, Mr. Sumners, then delivered the articles of impeachment at the Secretary's desk, and withdrew from the Chamber.[16]

5. AFTER THE ARTICLES OF IMPEACHMENT HAVE BEEN PRESENTED TO THE SENATE, THE NEXT STEP IS FOR THE SENATE TO ORGANIZE FOR THE TRIAL. THE PRESIDING OFFICER TAKES HIS OATH FOR THE TRIAL AND THEN, AS IN THE RITTER TRIAL, ADMINISTERS THE OATH TO THE SENATORS STANDING AT THEIR SEATS. IN THE CASE OF THE JOHNSON TRIAL, THIS PROCEDURE WAS SOMEWHAT DIFFERENT SINCE THE CHIEF JUSTICE OF THE SUPREME COURT PRESIDED

In the recent trials some particular Senator is designated on motion to administer the oath to the President pro tempore of the Senate or the Presiding Officer,[17] as the case may be, who then in turn administers the following oath to the rest of the membership of the Senate,[18] on occasion en bloc,[19] with the Senators standing at their respective seats:

> You do solemnly swear that in all things appertaining to the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, now pending, you will do impartial justice according to the Constitution and laws. So help you God.[20]

On March 12, 1936, during the trial of Halsted Ritter, it was announced that it was the duty of the Journal Clerk to keep the names of Senators who had taken the oath subsequent to the time the other Senators took their oath en bloc, and that there would be no other record.[21]

If the Senators are not present when the oath is administered to the entire membership, the oath will be administered to them subsequently when they show during the trial, but to participate in the trial they each must have taken the oath.[22]

On March 12, 1936, during the conduct of regular legislative business and prior to the hour of 1 o'clock, at which time the Senate would resolve itself into a court of impeachment, the following occurred:

> Mr. MCNARY. Mr. President, I am advised that the junior Senator from Vermont (Mr. Gibson) desires to take the oath as a juror in the impeachment proceedings.
>
> The VICE PRESIDENT. After a thorough survey of the situation, the best judgment of the Chair is that Senators who have not heretofore taken the oath as jurors of the court should take it after the Senate resolves itself into a court; all Senators who have not as yet taken the oath as jurors will take the oath at that time.[23]

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[16] March 10, 1936, 74-2, *Senate Journal*, p. 477.

[17] March 10, 1936, 74-2, *Senate Journal*, p. 477; March 9, 1933, 73-1, *Senate Journal*, p. 307; July 16, 1912, 62-2, *Senate Journal*, pp. 628-29.

[18] *Ibid.*; this form of the oath is prescribed in Rule XXV, and was adopted in 1868, and is the same oath administered to both the entire membership of the Senate and the Chief Justice.

[19] March 10, 1936, 74-2, *Senate Journal*, p. 477.

[20] March 10, 1936, 74-2, *Senate Journal*, p. 477.

[21] March 12, 1936, 74-2, *Record*, p. 3646.

[22] See Rule III.

[23] March 12, 1936, 74-2, *Record*, p. 3641.

In the case of an impeachment of the President of the United States or the Vice President of the United States, the Constitution and Rule IV provide for the Chief Justice of the United States Supreme Court to preside, and for the timing of the appearance of the Chief Justice. Rule IV of the Senate impeachment rules reads as follows:

> When the President of the United States, or the Vice-President of the United States, upon whom the powers and duties of the office of President shall have devolved, shall be impeached, the Chief Justice of the United States shall preside; and in a case requiring the said Chief Justice to preside, notice shall be given to him by the presiding officer of the Senate of the time and place fixed for the consideration of the articles of impeachment, as aforesaid, with a request to attend; and the said Chief Justice shall be administered the oath by the presiding officer of the Senate and shall preside over the Senate during the consideration of said articles, and upon the trial of the person impeached therein.[24]

During the trial of Andrew Johnson in 1868, the only precedent for a Chief Justice presiding during a trial of impeachment, a resolution was adopted following the reading to the articles of impeachment as follows:

> *Resolved,* That at 1 o'clock tomorrow afternoon the Senate will proceed to consider the impeachment of Andrew Johnson, President of the United States, at which time the oath or affirmation required by the rules of the Senate sitting for the trial of an impeachment shall be administered by the Chief Justice of the United States, as the presiding officer of the Senate, sitting as aforesaid, to each member of the Senate, and that the Senate sitting as aforesaid will at the time aforesaid receive the managers appointed by the House of Representatives.
>
> *Ordered,* That the Secretary lay this resolution before the House of Representatives.
>
> *Ordered,* That the articles of impeachment exhibited against Andrew Johnson, President of the United States, be printed.
>
> *Ordered,* That a copy of the "rules of procedure and practice in the Senate when sitting on the trial of impeachments" be communicated by the Secretary to the House of Representa-

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[24] In the trial of President Johnson, there was some conflict between the Chief Justice and the Senate as to when the Chief Justice should begin to preside.

On March 4, 1868, the Senate received a letter from Chief Justice Salmon P. Chase outlining his view of the timing of his appearance for the trial of Andrew Johnson which read in part:

> That when the Senate sits for the trial of an impeachment it sits as a court seems unquestionable.
>
> That for the trial of an impeachment of the President, this court must be constituted of the members of the Senate, with the Chief Justice presiding, seems equally unquestionable.
>
> . . . the organization of the Senate as a court of impeachment, under the Constitution, should precede the actual announcement of the impeachment on the part of the House.
>
> . . . articles of impeachment should only be presented to a court of impeachment: that no summons or other process should issue except from the organized court, and that rules for the government of the proceedings of such a court should be framed only by the court itself.

The letter was read to the Senate and referred to the select committee appointed to consider the message on impeachment from the House of Representatives and no further action was taken. The Senate proceeded to receive the managers on the part of the House and to hear the articles of impeachment in the absence of the Chief Justice, and at the conclusion of the day, adopted an order to notify the Chief Justice. (March 4, 1868, 40-2, *Journal*, p. 799.)

> tives, and a copy thereof delivered by him to each member of the House.[25]

This in turn was followed by the adoption of an order giving notice to the Chief Justice as follows:

> *Ordered,* That the notice to the Chief Justice of the United States to meet the Senate in the trial of the case of impeachment, and requesting his attendance as presiding officer, be delivered to him by a committee of three Senators, to be appointed by the Chair, who shall wait upon the Chief Justice to the Senate Chamber and conduct him to the Chair.[26]

The next day at the hour of 1 o'clock, the President pro tempore made the following statement and then vacated the Chair:

> The morning hour having expired, all legislative and executive business of the Senate is ordered to cease for the purpose of proceeding to business pertaining to the impeachment of the President of the United States. The chair as vacated for that purpose.[27]

At this point the Chief Justice of the United States entered the Chamber accompanied by the ranking associate justice of the Supreme Court and escorted by a Senate committee of three appointed for that purpose. Upon taking the Chair, the Chief Justice made the following statement:

> Senators: I attend the Senate in obedience to your notice, for the purpose of joining with you in forming a court of impeachment for the trial of the President of the United States, and I am now ready to take the oath.[28]

The oath was then administered to the Chief Justice by the Associate Justice as follows:

> I do solemnly swear that in all things appertaining to the trial of the impeachment of Andrew Johnson, President of the United States, I will do impartial justice according to the Constitution and laws. So help me God.[29]

Whereupon the Chief Justice administered the oath to the Senators individually and in alphabetical order. The oath is found in Rule XXV.

During the trial of the President, as the Chief Justice entered the Senate Chamber, he was escorted to the Chair by the chairman of the Senate committee appointed for that purpose.[30]

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[25] *Senate Journal,* 40-2, March 4, 1868, pp. 807-08.

[26] March 4, 1868, 40-2, *Journal,* p. 808.

[27] *Congressional Globe,* 40-2, March 5, 1868, p. 1671.

[28] March 5, 1868, 40-2, *Congressional Globe,* p. 1671.

[29] Ibid., p. 871; this form was agreed to in 1868, but as reported to the Senate, it provided that the form of the oath was to be administered to the Presiding Officer and members of the Senate. Senator Charles Drake of Missouri raised the point that the Constitution did not require that the Presiding Officer be sworn, only the Senators, and indeed that the Chief Justice was already sworn to perform his duties, and that presiding in an impeachment trial was part of those duties. (March 2, 1868, 40-2, *Congressional Globe,* pp. 1590-93.) As a result, the Senate agreed to an amendment striking out the words "Presiding Officer" from the heading providing for the oath. In spite of this, when the Chief Justice arrived in the Senate for the trial of Andrew Johnson, he was accompanied by the senior Associate Justice of the Supreme Court who did administer the oath.

[30] *Congressional Globe Supplement,* 40-2, March 23, 1868, p. 11.

6. AFTER THE OATHS ARE ADMINISTERED, THE CHAIR DIRECTS THE SERGEANT AT ARMS TO MAKE PROCLAMATION FOR THE BEGINNING OF THE TRIAL AND THE ORDER FOR A SUMMONS TO THE RESPONDENT IS ADOPTED

The proclamation is set forth under Rule II as follows:

> Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against ——— ———.

The proclamation is repeated each new day of the trial by the Sergeant at Arms, when directed by the Presiding Officer to do so, which occurs each day when the trial begins.[31]

At this point the Senate proceeds to adopt an order to notify the House of Representatives that the Senate is organized for the trial.[32]

Once the House had been notified, the managers appear, enter the Senate Chamber, and take seats assigned to them. Again, the proclamation is made by the Sergeant at Arms and an order for a summons to the respondent is adopted, which, in the case of Judge Ritter's trial, took the following form:

> *Ordered,* That a summons to the accused be issued as required by the rules of procedure and practice in the Senate, when sitting for the trial of the impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida, returnable on Thursday, the 12th of March 1936, at 1 o'clock in the afternoon.[33]

The form of the summons as set forth under Rule XXV is as follows:

> THE UNITED STATES OF AMERICA, ss:
>
> The Senate of the United States to ——— ———, greeting:
>
> Whereas the House of Representatives of the United States of America did, on the——— ——— day of ————, exhibit to the Senate articles of impeachment against you, the said ——— ———, in the words following:
>
> (Here insert the articles.)
>
> And demand that you, the said ———— ————, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be there upon had as are agreeable to law and justice.
>
> You, the said ———— ————, are therefore hereby summoned to be and appear before the Senate of the United States of America, at their Chamber in the city of Washington, on the ———— day of ————, at ——— o'clock, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States

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[31] See Rule XII and Rule XIII.

[32] March 9, 1933, 73-1, *Senate Journal,* p. 307.

[33] March 10, 1936, 74-2 *Journal,* p. 478.

shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness ——— ———, and Presiding Officer of the said Senate, at the city of Washington, this ——— day of ———, in the year of our Lord ——, and of the Independence of the United States the ———.

—— ——,
Presiding Officer of the Senate.

The form of the precept to be endorsed on the said writ of summons as set forth under Rule XXV is as follows:

THE UNITED STATES OF AMERICA, ss:

The Senate of the United States to ——— ———, greeting:

You are hereby commanded to deliver to and leave with ——— ———, if conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service, let it be done at least ——— days before the appearance day mentioned in the said writ of summons.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon indorsed, on or before the appearance day mentioned in the said writ of summons.

Witness ——— ———, and Presiding Officer of the Senate, at the city of Washington, this —— day of ———, in the year of our Lord ———, and of the Independence of the United States the ———.

—— ——,
Presiding Officer of the Senate.

Subsequently, after the Sergeant at Arms makes his return on serving the summons, the Secretary reads it to the Senate:

SENATE OF THE UNITED STATES,
OFFICE OF THE SERGEANT AT ARMS.

The writ of summons addressed to ——— ———, and the precept, addressed to me, were duly served upon the said ——— ——— by me by delivering true and attested copies of the same to the said ——— ——— at the ——, ——, on ——, the —— of ——— 19——, at —— o'clock in the forenoon of that day.

—— ——,
Sergeant at Arms, United States Senate.[34]

On the day appointed by the summons, the officer (the Sergeant at Arms) who served the process is then administered an oath by the Secretary of the Senate as to the truth of the return.

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[34] XXV, Impeachment Rules.

> "You, ——— ———, do solemnly swear that the return made by you upon the process issued on the ——th day of ——— 19——, by the Senate of the United States against ——— ———, is truly made, and that you have performed such service therein described. So help you God." [35]

The oath taken by the Sergeant at Arms, attesting to the proper return used in the trial of Judge Pickering, follows:

> I, James Mathers, do solemnly swear that the return made and subscribed by me, upon the process issued on the 12th day of January last by the Senate of the United States against John Pickering, is truly made, and that I have performed said services as there described, so help me God.[36]

The Sergeant at Arms, as directed by the Presiding Officer, then makes proclamation, which, in the case of Harold L. Ritter, was as follows:

> Halsted, L. Ritter! Halsted L. Ritter! Halsted L. Ritter! United States district judge for the southern district of Florida: Appear and answer to the articles of impeachment exhibited by the House of Representatives against you.[37]

The form used in the first impeachment trial, that of William Blount, which takes much the same form as used today, is as follows:

> Hear ye! Hear ye! Hear ye!
>
> William Blount, late a Senator from the State of Tennessee, come forward and answer the articles of impeachment exhibited against you by the House of Representatives.[38]

In the case of Judge Louderback, however, the respondent waived personal service and thus the oath was not administered to the Sergeant at Arms on the return of the writ. With this waiver the following resolution was adopted by the Senate:

In the Senate of the United States, Sitting as a Court of Impeachment

> Whereas on March 13, 1933, John N. Garner, Vice President and President of the Senate, acting under authority of the Senate, sitting as a Court of Impeachment, and in accordance with the Rules for Impeachment Trials, issued a writ of summons to Harold Louderback, United States district judge for the northern district of California, commanding him to appear before the Senate of the United States of America at their Chamber in the city of Washington on the 11th day of April, 1933, at 12:30 o'clock afternoon, to answer to articles of impeachment exhibited against him by the House of Representatives of the United States of America, and addressed to Chesley W. Jurney, Sergeant at Arms of the Senate, a precept commanding him to serve true and attested copies of said writ of summons and precept upon the said Harold Louderback personally or by leaving same at his usual place of abode or at his usual place of business; and

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[35] March 12, 1936, 74-2, *Journal*, p. 478.

[36] March 2, 1804, 8-1 *Annals of the Congress of the United States*, p. 327.

[37] March 12, 1936, 74-2. *Journal*, p. 478.

[38] December 17, 1798, 5-1 and 2, *Annals of the Congress of the United States*, p. 2245.

Whereas since the recess of the Senate, sitting as a Court of Impeachment, the said Chesley W. Jurney, as Sergeant at Arms, acting upon a suggestion of the Committee on the Judiciary of the Senate, with a view to securing a waiver of personal service of said writ of summons as required by the precept, communicated by telegraph with the said Harold Louderback, who consented to such waiver, and who subsequently forwarded to said Chesley W. Jurney, as Sergeant at Arms, a waiver, in writing, of personal service of said writ of summons, signed by him and witnessed on the 28th day of March, 1933, agreeing voluntarily to appear in person before the Senate of the United States at the time and place specified in said writ of summons and acknowledging receipt of true and attested copies of said writ of summons and precept, transmitted to him by the said Chesley W. Jurney, Sergeant at Arms: Now, therefore, be it

Ordered, That the action of the said Chesley W. Jurney, Sergeant at Arms of the Senate, in securing waiver of personal service of said writ of summons upon the said Harold Louderback be, and the same is hereby, ratified and approved; that the delivery, by registered mail, of true and attested copies of the said writ of summons and precept to the said Harold Louderback and his acceptance thereof, be deemed and taken to have been a satisfactory and sufficient compliance by the said Chesley W. Jurney, Sergeant at Arms, with the said precept, and that the said Chesley W. Jurney, as Sergeant at Arms, be, and he is hereby, authorized to make return of said writ of summons and precept accordingly.[39]

The return of the Sergeant at Arms was then read as follows:

SENATE OF THE UNITED STATES,
OFFICE OF THE SERGEANT AT ARMS.

The foregoing writ of summons, addressed to Harold Louderback, and the foregoing precept, addressed to me, were duly served upon the said Harold Louderback by the transmittal, by registered mail, to the said Harold Louderback of true and attested copies of the same, and by his receipt thereof, as shown in the attached waiver by the said Harold Louderback of personal service of summons, said waiver being made a part of this return.

CHESLEY W. JURNEY,
Sergeant at Arms, United States Senate.

IN THE SENATE OF THE UNITED STATES, SITTING AS A COURT OF IMPEACHMENT IN THE CASE OF HAROLD LOUDERBACK, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Waiver of personal service of Harold Louderback, United States district judge for the northern district of California.

I, Harold Louderback, United States district judge for the northern district of California, do hereby waive personal service of summons issued on the 13th day of March, 1933, by Hon. John N. Garner, Vice President and President of the Senate,

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[39] April 11, 1933, 73-1, *Senate Journal,* pp. 308-09.

> which commands me to appear before the Senate of the United States on April 11, 1933, at 12:30 p.m., to answer specific articles of impeachment exhibited to the Senate by the House of Representatives, and agree to voluntarily appear in person before the Senate of the United States at the aforesaid time.
>
> I acknowledge receipt of a true and attested copy of the writ of summons issued in this case, together with a like copy of the precept.
>
> Witness my signature this 28th day of March, 1933, at the city of San Francisco, State of California.
>
> HAROLD LOUDERBACK,
> *Respondent.*
>
> Signature of witness:
> JAMES M. HANLEY.[40]

The Vice President, who was the Presiding Officer, announced that in view of the waiver of summons, the oath normally administered to the Sergeant at Arms would be dispensed with, and he made the usual proclamation:

> Harold Louderback! Harold Louderback! Harold Louderback, United States district judge for the northern district of California: Appear and answer to the articles of impeachment exhibited by the House of Representatives against you.[41]

Following the oath, the Presiding Officer directs the Sergeant at Arms to make the following proclamation:

> ——— ———! ——— ———! ——— ———, appear and answer the articles of impeachment exhibited against you by the House of Representatives of the United States.

At this point the counsel for the respondent and the respondent (if he cares to appear) appear at the bar of the Senate and take the assigned seats (to the right of the Chair).

Once the counsel for the respondent, and the respondent (if he cares to appear), and any accompanying lawyers, have appeared and taken their seats, then, if they wish to attend, the House of Representatives, as a committee of the whole House, preceded by its Chairman, and accompanied by the Speaker of the House and the Clerk, take the seats provided for them, and the trial gets underway. The counsel for the respondent is asked for a reply to the subpena issued and often a request for a delay in the trial is made, usually requesting a certain number of days to prepare and file answer to the articles of impeachment.

In the case of President Johnson the Senate agreed to an order granting the President ten days to prepare his answer, and so the Senate sitting for the trial of the President adjourned for ten days.

The first order of business upon reconvening is to hear from the counsel for the respondent the answer to the articles of impeachment. Once the answer of the respondent to the articles of impeachment has been completed, the managers on the part of the House present, a replication of the House, which is an answer by the House of Representatives to the respondent's answer to the articles of impeachment. Following another possible delay, if requested and granted, which in the Johnson case was granted for six days, the trial proceeds with the presentation of documentary evidence and the calling of witnesses.

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[40] April 11, 1933, 73-1, *Senate Journal,* p. 309.
[41] April 11, 1933, 73-1, *Senate Journal,* p. 309.

V. PRECEDENTS AND PRACTICES FOR IMPEACHMENT TRIAL

The Senate sitting as a court of impeachment has established through its rules, practices, and precedents, various definite procedures for the conduct of an actual impeachment trial, as contrasted to the preliminaries and steps pursued to get the trial underway. Some of the basic and more common parliamentary usages utilized during a trial are set forth below in alphabetical order:

Adjournment and Time of Daily Sessions of Trial

Rules on:

Rule XII provides:

> At 12:30 o'clock afternoon, or at such other hour as the Senate may order, of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of ——— ———, in the Senate Chamber.

Rule XIII provides:

> The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) 12 o'clock m., and when the hour shall arrive, the Presiding Officer upon such trial shall cause the proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

Rule XXVI provides:

> If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

Adjourn to Time Certain:

A motion to adjourn to an hour certain other than 12 m. has on occasion been ruled not in order.

> On March 30, 1868,[42] in the Senate, sitting for the impeachment trial of Andrew Johnson, President of the United States, Mr. John Sherman moved an adjournment.
>
> Mr. Charles Sumner, of Massachusetts, suggested that the adjournment be to 10 o'clock on the morrow.
>
> The Chief Justice said:
>
> The hour of meeting is fixed by the rule, and the motion of the Senator from Massachusetts is not in order.

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[42] March 30, 1868, 40–2, *Congressional Globe Supplement,* p. 53.

Again, in 1912, it was held that when the Senate was sitting for an impeachment trial and adopts an order setting a specific time to adjourn each day, a motion to adjourn at another hour is not in order.[43]

Later decisions and practices, however, do not conform to the above rulings. During the trial of William W. Belknap, the motion to adjourn to a certain time was admitted. On June 1, 1876, Mr. George G. Wright, a Senator from Iowa, proposed this inquiry:

> Mr. President, I wish to inquire whether it would be in order now to move to adjourn to a day certain, or whether the order should be properly that when the Senate sitting as a court of impeachment adjourns, it be to a definite time?

The President pro tempore said:

> It would be in order to move to adjourn to a certain time.[44]

On various other occasions the Senate sitting for impeachment trials had adjourned [45] or recessed [46] to an hour certain.

Legislative and Executive Business, Unaffected by:

The Senate, when sitting as a court of impeachment, may adjourn over without interfering with legislative sessions of the Senate. See the following provision of Rule XIII of the impeachment rules:

> The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

Orders for Meeting at Different Hours:

The Senate has adopted general orders setting a different time to commence daily sessions of impeachment trials. In the 1912 trial, Mr. Clark of Wyoming submitted the following order, which was considered by unanimous consent and agreed to:

> *Ordered,* That the daily sessions of the Senate sitting in the trial of impeachment of Robert W. Archbald, additional circuit judge of the United States, shall, unless otherwise ordered, commence at 2 o'clock in the afternoon.[47]

On April 6, 1936, the Senate adopted the following order regarding the hours of daily sessions:

> *Ordered,* That until or unless otherwise ordered, the daily sessions of the Senate, sitting for the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, shall be held as follows: From 12 o'clock noon until 1:30 p.m. and from 2:00 p.m. until 5:30 p.m.[48]

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[43] December 5, 1912, 62-3, *Record,* p. 170

[44] June 1, 1876, 44-1, *Congressional Record,* p. 161.

[45] See June 6, 1876, 44-1, *Journal,* p. 949; Jan. 27, 1905, 58-3, *Journal,* p. 347; Feb. 3, 1905, 58-3, *Journal,* p. 359; Feb. 6, 1905, 58-3, *Journal,* p. 360; Feb. 10, 1905, 58-3, *Journal,* p. 360; Dec. 5, 1912, 62-3, *Journal,* p. 318; Dec. 6, 1912, 62-3, *Journal,* p. 319; April 11, 1933, 73-1, *Journal,* p. 318; April 18, 1933, 73-1, *Journal,* p. 325; May 15, 1933, 73-1, *Journal,* p. 328; May 16, 1933, 73-1, *Journal,* p. 329; April 3, 1936, 74-2, *Journal,* p. 494.

[46] April 14, 1936, 72-2, *Journal,* p. 505; April 15, 1936, 74-2, *Journal,* p. 506.

[47] December 3, 1912, 62-3, *Journal,* p. 317.

[48] April 6, 1936, 74-2, *Senate Journal,* p. 495.

Precedence of Motions:

During the trial of President Johnson in 1868, Senator Edmunds of Vermont moved that the Senate adjourn. At this point Senator Fessenden of Maine moved that when the Senate adjourn, it adjourn until Monday next. Senator Edmunds made the point of order that his simple motion to adjourn took precedence, and the Chief Justice ruled "the motion to adjourn takes precedence over every other motion if it is not withdrawn." [49]

Amendments

Any proposal of a Senator during an impeachment trial is only amendable upon the motion of other Senators, neither managers on the part of the House nor the counsel for the respondent may amend a Senator's proposal. The reverse is true of any proposal of managers on the part of the House of Representatives or counsel for the respondent. See the following statement by the President pro tempore in the Belknap trial:

> The Chair has ruled that a proposition made by managers or counsel is not amendable by Senators; but any proposition made by a Senator is amendable by a Senator, nor can the proposition made by Senators be amended by the counsel or managers. A motion made by a Senator has priority of one offered by the managers or the counsel.[50]

If a Senator proposes a substitute for any motion made by the managers or counsel, such substitute would have priority.[51]

Appeals

Decisions of the Chair are subject to appeal by any Senator. Note the following portion of Rule VII:

> And the Presiding Officer on the trial may rule on all questions of evidence including, but not limited to, questions of relevancy, materiality, and redundancy of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision without debate; or he may at his option, in the first instance, submit any such question to a vote of the members of the Senate. Upon all such questions the vote shall be taken in accordance with the Standing Rules of the Senate.

Only a Senator may appeal a decision of the Presiding Officer. See the following colloquy at the trial of Andrew Johnson in 1868: [52]

> The CHIEF JUSTICE. The Chief Justice will state the rule which he conceives to be applicable, once more. In this body he is the presiding officer; he is so in virtue of his high office under the Constitution. He is Chief Justice of the United States, and therefore, when the President of the United States

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[49] April 3, 1868, 40-2, *Congressional Globe Supplement*, pp. 110-11.
[50] June 6, 1876, 44-1, *Record*, Vol. 4, pt. 7, p. 166.
[51] June 6, 1876, 44-1, *Record*, Vol. 4, pt. 7, p. 166.
[52] June 7, 1876, 44-1, *Record*, Vol. 4, pt. 7, p. 192.

is tried by the Senate, it is his duty to preside in that body; and, as he understands, he is therefore the President of the Senate sitting as a court of impeachment. The rule of the Senate which applies to this question is the seventh rule, which declares that "the presiding officer may, in the first instance, submit to the Senate, without a division, all questions of evidence and incidental questions." He is not required by that rule so to submit those questions in the first instance; but for the dispatch of business, as is usual in the Supreme Court, he expresses his opinion in the first instance. If the Senate who constitute the court, or any member of it, desires the opinion of the Senate to be taken, it is his duty then to ask for the opinion of the court.

Mr. Manager **Butler**. May I respectfully inquire whether that would extend to a Manager; whether a Manager would have the right to ask that a question of law should be submitted to the Senate?

The **Chief Justice**. The Chief Justice thinks not. It must be by the action of the court or a member of it.[53]

Arguments at the trial

Incidental and Interlocutory Questions:

During the trial of Andrew Johnson in 1868, there was an extended discussion precipitated by the managers on the part of the House over the right to open and close arguments on incidental questions. The position of the House was that the managers had the right to open and close arguments on any question regardless of who made the question. The Senate rejected this contention and allowed whichever side proposed the motion or made an objection to open and close the argument.[54]

Rule XXI of the impeachment rules, as amended by S. Res. 479, adopted August 16, 1986, concerning interlocutory questions reads as follows:

> All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour, unless the Senate otherwise orders, on each side.

When first adopting this rule in 1868, question was raised as to whether there should be a provision giving the opening and closing to the person making the motion or objection. This was answered to the effect that the committee drafting the rules had considered this question and had concluded that specific provisions would be unnecessary since it was habitual for the side making the motion or raising the objection to yield after argument and then to conclude the argument after the opponent had spoken. The committee thought this would continue to be the practice under this rule.[55]

The President pro tempore at the trial of Judge Archbald in 1912 made the following statement to the managers and counsel:

> The Chair desires, in the interest of expedition and orderly procedure, to suggest to both the managers on the part of the

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[53] March 31, 1868, 40-2, *Congressional Globe Supplement*, p. 60.

[54] April 1, 1868, 40-2, *Congressional Globe Supplement*, p. 70.

[55] March 2, 1868, 40-2, *Congressional Globe*, pp. 1568-80.

House and counsel for the respondent that hereafter when incidental questions are to be discussed they be confined to an opening and a reply and a conclusion. The Chair will not rule that arbitrarily or positively, but trusts that counsel will act upon its suggestion.[56]

Final Arguments, Limitation on:

Rule XXII provides that the "final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate upon application for that purpose), and the argument shall be opened and closed on the part of the House of Representatives."

The Senate in different trials has adopted a special order to limit the final arguments by the managers and the counsel. For example, the following order was adopted in the trial of Halsted L. Ritter in 1936:

> *Ordered,* That the time for final argument of the case of Halsted L. Ritter shall be limited to 4 hours, which said time shall be divided equally between the managers on the part of the House of Representatives and the counsel for the respondent, and the time thus assigned to each side shall be divided as each side for itself may determine.[57]

Likewise, in the case of Judge Louderback in 1933, the time for final argument was limited to 4 hours, to be equally divided between the managers on the part of the House and the counsel for the respondent, that time to be subdivided as each side might determine.[58]

In the trial of Judge Archbald, however, the two sides were given three days, to be equally divided, to present their final arguments, and if they had portions of their final arguments which they wished to have printed as if delivered orally, they were allowed to file these with the Official Reporters of Debate.[59]

In the trial of Judge Swayne in 1905, no specific provision was made for final arguments. They were begun on the 23rd of February and concluded the next day.[60]

In the trial of Secretary of War Belknap, there was no limitation on the time for the final arguments but there was on the number. Three managers and three counsels for the respondent could be heard in the concluding arguments.[61] These arguments lasted from July 20th to July 26, 1876.[62]

In the trial of Andrew Johnson in 1868, the Senate adopted an order that as many of the managers and of the counsels for the President as desired to do so be permitted to file argument or address the Senate orally.[63] The final argument lasted from April 22 to May 6, 1868.[64]

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[56] December 4, 1912, 62-3, *Record*, p. 107.
[57] April 13, 1936, 74-2, *Senate Journal*, p. 505.
[58] May 24, 1933, 73-1, *Senate Journal*, p. 338.
[59] January 8, 1913, 62-3, *Senate Journal*, pp. 324-25.
[60] February 23, 24, 1905, 58-3, *Senate Journal*, p. 305.
[61] July 20-26, 1976, 44-1, *Senate Journal*, pp. 983-87.
[62] July 20-26, 1876, 44-1, *Senate Journal*, pp. 983-87,
[63] April 22, 1868, 40-2, *Senate Journal*, p. 919.
[64] April 22-May 6, 1868, 40-2, *Senate Journal*, pp. 919-32.

Articles of Impeachment

Amendments to:

In the trial of Halsted L. Ritter, the House of Representatives amended their original articles of impeachment. On March 30, 1936, they sent the following message to the Senate:

> *Resolved,* That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted an amendment to the articles of impeachment heretofore exhibited against Halsted L. Ritter, United States district judge for the southern district of Florida, and that the same will be presented to the Senate by the managers on the part of the House.
>
> And also that the managers have authority to file with the Secretary of the Senate, on the part of the House, any subsequent pleadings they shall deem necessary.[65]
>
> The following day, March 31, the amendments to the articles were presented,[66] by the managers on the part of the House, and the counsel for the respondent asked for 48 hours to file his response to the new articles.[67]

In the case of Judge Harold Louderback in 1933, article V of the article of impeachment was amended by the House of Representatives. The following proceedings occurred:

> *Resolved,* That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted an amendment to article V of the articles of impeachment heretofore exhibited against Harold Louderback, United States district judge for the northern district of California, and that the same will be presented to the Senate by the managers on the part of the House,
>
> And, also that the managers have authority of file with the Secretary of the Senate, on the part of the House, any subsequent pleadings they shall deem necessary.
>
> Mr. Sumners, on behalf of the managers on the part of the House, presented article V of the articles of impeachment, as amended, and proceeded to read the same; when,
>
> On motion by Mr. Ashurst, and by unanimous consent,
>
> The reading of the said article, as amended, was dispensed with, and it was ordered to be printed for the use of the Senate.[68]

Form of Putting Question on:

See "Sequence of Events at the Close of a Trial," pages 86–93, the form for putting question on the articles of impeachment.

Printing of:

On March 10, 1936, following the swearing-in of the Senators and the organization of the trial of Halsted L. Ritter, an order was agreed to to print the articles of impeachment for the use of the Senate.[69]

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[65] March 30, 1936, 74–2, *Senate Journal,* p. 480.
[66] March 31, 1936, 74–2, *Senate Journal,* p. 480.
[67] March 31, 1936, 74–2, *Senate Journal,* p. 482.
[68] April 18, 1933, 73–1, *Senate Journal,* p. 318.

Votes and Procedure Thereon:

In the trial of Halsted Ritter in 1936, following the conclusion of the final arguments on the part of the counsel and the managers, the doors of the Senate were closed for deliberation which continued throughout the day and into the following day. At this closed session the following orders were adopted providing for a vote on each of the articles of impeachment, as well as giving each Senator opportunity to file a written opinion thereon:

> *Ordered,* That upon the final vote in the pending impeachment of Halsted L. Ritter each Senator may, within 4 days after the final vote, file his opinion in writing, to be published in the printed proceedings in the case.
>
> *Ordered,* That upon the final vote in the pending impeachment of Halsted R. Ritter, the Secretary shall read the articles of impeachment separately and successively, and when the reading of each article shall have been concluded the Presiding Officer shall state the question thereon as follows:
>
> Senators, how say you? Is the respondent, Halsted L. Ritter, guilty or not guilty?
>
> Thereupon the roll of the Senate shall be called, and each Senator as his name is called, unless excused, shall arise in his place and answer "guilty" or "not guilty." [70]

This resolution is the standard form now in use in impeachment trials, and indeed in all of the trials, save one, it has been the practice to secure the votes on each article in numerical order and pronounce judgment separately on each article.

In the trial of President Johnson, however, an order was adopted that the Senate proceed first to article XI and then on the other ten articles successively.[71] Pursuant to this order, the Chief Justice had the eleventh article read first and the Chief Clerk proceeded to call the names of the Senators in alphabetical order. When the rollcall was finished and an insufficient number of Senators had voted to secure conviction, Senator George Williams of Oregon moved that the Senate adjourn from that day, May 16, 1868, until May 26th. Senator Hendricks of Indiana made the point of order that since the Senate was acting pursuant to a previous order providing for the successive votes on the articles of impeachment, this motion to adjourn to a day certain was not in order. The Chief Justice upheld the point of order but Senator John Conness of California appealed the decision of the Chair and the Chief Justice was overruled by 24 to 30. At this point the question recurred on the motion to adjourn to a day certain and the motion carried.[72]

Upon reconvening on the 26th day of May, the Senate changed its previous order and voted to go to the second article of impeachment. Following the vote on that article, the third article was taken up and voted upon, at which point a motion to adjourn *sine*

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[69] March 10, 1936, 74-2, *Record,* p. 3489.

[70] April 15, 16, 1936, 74-2, *Senate Journal,* p. 506.

[71] May 16, 1868, 40-2, *Senate Journal,* p. 942.

[72] May 16, 1868, 40-2, *Senate Journal,* p. 944.

die was moved and carried. The Chief Justice, before announcing the result of the vote, stated the judgment of the Senate that the President of the United States was acquitted of the charges.[73]

Attendance of Senators at Impeachment Trial

The Senate may direct the Sergeant at Arms to request and subsequently to compel the attendance of the absent Senators, a quorum not having appeared on a call.[74]

Briefs, When Submitted and Printed

Briefs are not submitted until after the managers and the counsels for the respondent have made their opening statements and have introduced witnesses. Once such briefs have been filed, they are printed in the *Record* for the immediate use of the Senators.

In the trial of Robert W. Archbald, the following order was adopted for that purpose:

> *Ordered,* That such briefs and citations of authorities as have already been prepared by the managers on the part of the House and counsel for the respondent be filed with the Secretary and printed in the Record for the immediate use of Senators.[75]

Chief Justice as Presiding Officer

Appeals:

See appeals, pages 35–36.

Form for Putting the Question on the Articles of Impeachment:

During the trial of Andrew Johnson, the Senate was unable to agree on a form for putting the question on the articles of impeachment, and thus the Chief Justice was allowed to decide on the following form:

> Mr. Senator ———, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty, or not guilty, of a high misdemeanor, as charged in this article of impeachment?[76]

Present day practice provides for the Presiding Officer to make the following statement: "Senator, how say you? Is the respondent ——— ———, guilty or not guilty?" Whereupon the Senate roll is called and each Senator answers simply "guilty" or "not guilty."

Vote by:

The Chief Justice has voted in the case of a tie in an impeachment trial on two occasions. On March 31, 1968, a motion was made that the Senate retire for consultation. The yeas were 25 and the nays were 25, and the Chief Justice voted in the affirmative. At this point the Senate retired to its conference chamber.

Various amendments to the impeachment rules were discussed in this conference. As a result of the vote by the Chief Justice, Senator Charles Sumner of Massachusetts moved "That the Chief Justice of the United States, presiding in the Senate on the trial of the President of the United States, is not a member of the Senate, and has no authority, under the Constitution, to vote on any question during the trial, and he can pronounce decision only as the organ of the Senate, with its assent."[77] This was defeated by a vote of 22 yeas to 26 nays. Senator Drake then proposed the following: "It is the judgment of the Senate that under the Constitution the Chief Justice presiding over the Senate in the pending trial has no privilege of ruling questions of law arising thereon, but that all such questions should be submitted to a decision by the Senate alone."[78] This was defeated by 20 yeas to 30 nays.[79]

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[73] May 26, 1868, 40-2 *Senate Journal,* pp. 948–51.
[74] May 23, 1933, 73-1, *Journal,* p. 337, *Record,* p. 3971.
[75] December 5, 1912, 62-3, *Senate Journal,* p. 318.
[76] May 16, 1868, 40-2, *Senate Journal,* p. 943.

Finally, the Senate agreed by a vote of 31 yeas to 19 nays to the following amendment to its rules of impeachment:

> The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the presiding officer on the trial shall direct all the forms of proceedings while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the presiding officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision: or he may, at his option, in the first instance submit any such question to a vote of the members of the Senate.[80]

At the end of the conference Senator Sumner raised the issue of the right of the Chief Justice to vote on any question during the trial, but objection was raised to the fact that this was not germane to the matter on which the Senate had retired to confer and a motion that the Senate return to the Chamber without acting on Senator Sumner's proposal was agreed to.[81]

During the next day's proceedings, Senator Sumner again raised the issue of the right of the Chief Justice to vote. During the reading of the Journal he proposed an amendment to the Journal as follows: "It appearing from the reading of the Journal of yesterday that on a question where the Senate were equally divided the Chief

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[77] March 31, 1868, 40-2, *Congressional Globe Supplement,* p. 63.

[78] *Ibid.*

[79] *Ibid.*

[80] *Ibid.* Rule VII, which describes the duties of the Presiding Officer of the Senate in preparing the Chamber for trial, and the duties of the Presiding Officer on the trial regarding the conduct of proceedings and the ruling on questions of evidence and incidental questions, was amended in three parts by the adoption of S. Res. 479, 99th Congress, 2d Session, on August 16, 1986. The first of these amendments enumerates and emphasizes the kinds of rulings the Presiding Officer is expected to make by adding to the words questions of evidence: "including, but not limited to, questions of relevance, materiality, and redundancy."

The second change was the insertion of the phrase "without debate" in the second sentence. The intent of this change is to make it clear that a decision by the Senate to overrule or sustain a ruling of the Presiding Officer is not to be deliberated in open session. This change would conform Rule VII with the other impeachment rules, e.g. Rule XXIV, which provide that decisions on these and other matters shall be "without debate, except when the doors shall be closed for deliberation."

The third change to Rule VII was the deletion of the last sentence which effectively required the Senate to arrive at its decisions by voice vote unless the yeas and nays were demanded. The new language allows the Senate to vote its decisions "in accordance with the Standing Rules of the Senate," that is by voice vote or by a division, or, when requested by one-fifth of the members present, by the yeas and nays.

[81] March 31, 1868, 40-2, *Congressional Globe Supplement,* p. 63.

Justice, presiding on the trial of the President, gave a casting vote, it is hereby declared that, in the judgment of the Senate, such vote was without authority under the Constitution of the United States." [82] This was rejected by a vote of 21 yeas, 27 nays.[83] Thus the Senate turned down each attempt to prevent the Chief Justice from voting, and in a subsequent action concerning a motion for adjournment, the vote being yeas 22, nays 22, the Chief Justice voted in the affirmative, deciding the issue. This vote was not challenged.[84]

At the end of the trial of President Johnson, however, another occasion arose on a motion to adjourn to a date certain when the vote was tied 27 to 27 and the Chief Justice refrained from voting.[85]

Witnesses Examined by:

On two occasions while the Senate was sitting for the impeachment trial of Andrew Johnson, the Chief Justice, who was presiding, examined witnesses on his own.[86]

Closed Doors

Senators do not debate in an impeachment trial unless the Senate is sitting in closed session when debate is allowed as provided in Rule XXIV.

During the trial of Halsted L. Ritter, a Senator moved that the doors of the Senate be closed, which was agreed to. The galleries were cleared and the respondent and his counsel withdrew from the Chamber,[87] and debate was in order.

Commission to Take Deposition of a Witness

The Senate, and not the Presiding Officer, should determine any matter on the issuance of a commission to take the deposition of a witness in an impeachment trial.[88]

Committees in Impeachment Trials

Use of Committees by the Senate in Impeachment Trials:

Rule XI provides that the Presiding Officer, if the Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony before an impeachment trial in the Senate, if the entire trial is not held in the Senate.

During the trial of Judge Pickering, a committee was appointed:

> . . . to search the Journals and report precedents in cases of impeachments; and that Messrs. Tracy, Bradley, Baldwin, Wright, and Cocke, to whom it was referred on the 14th of November last, to consider and report, if any, what further pro-

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[82] *Ibid.*

[83] *Ibid.*

[84] April 2, 1868, 40-2, *Congressional Globe Supplement,* p. 92.

[85] May 26, 1868, 40-2, *Senate Journal,* p. 948.

[86] April 1, 1868, 40-2, *Congressional Globe Supplement,* p. 72; April 2, 1868, 40-2, *Congressional Globe Supplement,* p. 89.

[87] April 15, 1936, 74-2, *Senate Journal,* p. 506.

[88] May 15, 1933, 73-1, *Journal, p. 328, Record,* p. 3397.

> ceedings ought to be held by the Senate, respecting the impeachment of John Pickering, by this committee.[89]

In the trial of Judge Peck in 1830, following the impeachment at the bar of the Senate by two members of the House of Representatives, the Senate proceeded to consider the message from the House and resolved:

> That it be referred to a select committee, to consist of three members, to consider and report thereon.[90]

Likewise, in the case of Judge Archbald in 1912, following the reading of the articles of impeachment and in order that they be printed by the Senate, the articles were referred to a special committee appointed by the President pro tempore, pursuant to a resolution as follows:

> *Resolved*, That the mesage of the House of Representatives relating to the impeachment of Robert W. Archbald be referred to a select committee, to consist of five Senators, to be appointed by the President pro tempore.
>
> The President pro tempore appointed as the committee Mr. Clark of Wyoming, Mr. Nelson, Mr. Dillingham, Mr. Bacon, and Mr. Culberson.[91]

Committee Appointed to Receive Evidence:

In 1935, a resolution was adopted by the Senate to authorize the appointment by the Presiding Officer of a committee of 12 Senators to receive evidence and take testimony in the trial of an impeachment.

On August 14, 1986, the Senate agreed to Senate Resolution 481, "to provide for the appointment of a committee to receive and to report with respect to articles of impeachment against Harry E. Claiborne."

This measure states:.

> "*Resolved*, Pursuant to rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Presiding Officer shall appoint a committee of twelve Senators to perform the duties and to exercise the powers provided for in the rule.
>
> "SEC. 2. The Majority and Minority Leader shall each recommend six Members to the Presiding Officer for appointment to the committee.
>
> "SEC. 3. Necessary expenses of the committee shall be paid from the contingent fund of the Senate from the appropriation account 'Miscellaneous Items' upon vouchers approved by the chairman of the committee.
>
> "SEC. 4. The committee shall be deemed to be a standing committee of the Senate for the purpose of printing reports, hearings, and other documents for submission to the Senate under rule XI.
>
> "SEC. 5. The Secretary shall notify the House of Representatives of this resolution."[92]

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[89] January 3, 1804, 8-1, *Senate Journal*, p. 332.

[90] April 26, 1830, 21-1, *Senate Journal*, p. 269.

[91] July 15, 1912, 62-2, *Senate Journal*, p. 628.

[92] August 14, 1986, *Congressional Record*, p. S11673.

On August 16, 1986, the Senate agreed to changes in the Senate Impeachment Rules. (S. Res. 479, 99th Cong., 2d Session.)

The Committee report states:

> Rule XI, which provides for the appointment of a committee of Senators to receive evidence and to take testimony is amended in two relatively minor particulars. First, the committee substitutes the phrase "if the Senate so orders" for "upon the order of the Senate" relating to the utilization of the committee device which was added to the rules in 1935. The reason for this language change is to make it doubly clear that when the committee device authorized by the rule is desired, it must be ordered by the Senate.
>
> The Committee also removes the requirement that the committee authorized by the rule be fixed at twelve Senators. It was the consensus of the members that the committee's composition should be left open and thus allow the Senate to appoint members in accord with the needs of the situation. (Senate Report 99-401: 99th Cong., 2d Session.)[93]

Congress Must be in Session During Trial

During the trial of Secretary of War Belknap in 1876, the Senate considered the issue of whether an impeachment trial had to take place in the presence of the House of Representatives and after some discussion decided "that the impeachment can only proceed while Congress is in session."[94]

Counsel for the Respondent

See also under "Managers and Counsel."

Assistants for the Counsel Allowed on the Floor During the Trial:

During the trial of Halsted L. Ritter, the counsel for the respondent asked unanimous consent to have an assistant sit with the counsel. There was no objection.[95]

Improper Language by:

The presiding officer at an impeachment trial has exercised authority to call counsel to order for using improper language.

On February 14, 1905, during the trial of Judge Charles Swayne, Mr. Manager Henry W. Palmer offered to prove that the respondent on the 28th of November, 1904, at the city of Washington, D.C. voluntarily appeared before a subcommittee of the House Judiciary Committee, not having been summoned as a witness or otherwise, and voluntarily made a statement.

At this point Mr. John M. Thurston, of counsel for the respondent, objected to the reading of the statement, saying:

> Mr. President, standing here as objecting to this offer, I repeat what I said a few days since about this attempt to present to this court the statements made by Judge Swayne while he was a witness before that committee of the House of

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[93] August 16, 1986, *Congressional Record*, (for August 15, 1986) pp. S11902-S11903.

[94] June 19, 1876, 44-1, *Senate Journal*, p. 957.

[95] April 8, 1936, 74-2, *Senate Journal*, p. 497.

Representatives. The offer to prove what he said before that committee is all that, under any rule of practice that has ever prevailed in any court, can be made. It has never been held that in offering to prove what a witness had said somewhere else a statement could be made in the offer of what he had said somewhere else, because that would, by indirection and by pettifogging, Mr. President, present to the court, the judge, or the jury the statement of what the evidence would show when it was really admitted, if at all, and evidently in the expectation—

At this point Senator Pettus, of Alabama, intervened and said:

Mr. President, I object to the word "pettifogging" being used in this court.

The Presiding Officer (Orville H. Platt, of Connecticut) said:

The Presiding Officer thinks that the word ought not to have been used.

Mr. Thurston then continued:

I apologize for the use of that word. I was not using it with reference to the offer. I was saying that it was a common custom in some courts to attempt to show by a statement of this kind what a witness had said somewhere else, when the attorneys making the offer knew and understood perfectly well that the statement itself would not be proper evidence to be introduced in the case, and that an offer of this kind was and is an attempt to present to a court evidence known to be improper, prohibited by the statutes of the United States, and its reading to the court in an offer must necessarily be, and can only be, an attempt by indirection to place in the record and before the judges testimony that they know is not legal testimony and ought not to be considered.

Now, Mr. President, I do not wish to reflect—and if I have made any reflections upon these honorable managers I withdraw them—I do not wish to reflect upon them in this case, but I do say that in other cases and in other courts where offers of this kind have been made they have been necessarily made with the express desire to place in the record before the court and the jury a line of evidence that is prohibited by the law of the land from being presented. We object both to the offer to introduce the testimony and to the offer to read the proposed testimony to this court. Mr. President, we also protest against this manner of presenting evidence by an offer to prove something.

The only proper way, in our judgment, if the managers wish to produce this statement and have this court pass upon its competency, is to put a witness on the stand or to offer the record, to ask the question, or let the record be objected to, and pass upon that. I do not think it is proper for us, Mr. President—and the occasion may arise in this case where it would be most desirable for us, if it were proper—to offer to prove a certain statement of fact that we do not believe can be introduced in evidence if objected to upon the other side. But, sir, feeling our responsibility here, we will not attempt to offer before this court a statement of anything, nor will we attempt to offer in this court to prove facts setting it forth. What facts

> we have to prove we will prove by records, or we will prove them by questions directed to the witnesses presented in the court, and let the objections, if any there be, be taken in the regular way and upon legal lines.

Mr. Manager Palmer announced that he would hand the statement to the court and let the court pass upon it.

Senator Bailey, of Texas, said:

> Mr. President, while the Presiding Officer passes on such questions in the first instance, Senators must pass upon it finally, and they must know what is offered before they can vote intelligently upon the question. It is unprecedented to say that the court shall not be permitted to bear what is offered before passing upon the admissibility of it. * * * for my own guidance, I would like to know exactly the question before the court.

The Presiding Officer said:

> It is in writing. The managers offer to prove that the respondent on the 28th of November, 1904, in the city of Washington, D.C., voluntarily appeared before a subcommittee of the House Judiciary Committee, not have been summoned as a witness or otherwise, and voluntarily made the following statement. Then the statement is recited.

No further demand was made for the reading of the statement, and it was not read.[96]

Motion to Strike Various Articles of Impeachment Made by:

In the trial of Halsted L. Ritter in 1936, following the presentation of articles of impeachment in their amended form, a motion was made by the counsel for the respondent to strike either article I or article II on the basis that article II contained all the charges and allegations of article I, and thus required the respondent to defend himself twice on the same issues.[97] Note the following:

The counsel for the respondent presented a motion:

> To strike article I or, in the alternative. To require election as to article I and II and motion to strike article VII.[98]

on the following grounds:

> 1. Article VII includes and embraces all the charges set forth in articles I, II, III, IV, V, and VI.
>
> 2. Article VII constitutes an accumulation and massing of all charges in preceding articles upon which the Court is to pass judgment prior to the vote on article VII, and the prosecution should be required to abide by the judgment of the Senate rendered upon such prior articles and the Senate ought not to countenance the arrangement of pleading designed to procure a second vote and the collection or accumulation of adverse votes, if any, upon such matters.
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> 3. The presentation in article VII of more than one subject and the charges arising out of a single subject is unjust and prejudicial to respondent.

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[96] February 14, 1905 58-3, *Record*, pp. 2536, 2537

[97] March 31, 1936, 74-2, *Senate Journal*, p. 482.

[98] *Ibid.*

> 4. In fairness and justice to respondent, the Court ought to require separation and singleness of the subject matter of the charges in separate and distinct articles, upon which a single and final vote of the Senate upon each article and charge can be had.[99]

The Chair considered that motion for several days [100] and then ruled that the motion was not well taken in that article I alleged illegal and corrupt receipt of money and article II alleged a conspiracy as to the means of receiving said money, and thus were two entirely different bases for impeachment. This ruling was submitted to the Senate for judgment and was upheld by the Senate.[101]

The respondent also moved to strike article VII of the impeachment articles on the basis that it included all the charges set forth in articles I through VI, and that fairness required that the charges be distinct and separate.[102]

Several days later the Presiding Officer submitted that question to the Senate with the following statement:

> His reason for so doing is that an impeachment proceeding before the Senate, sitting as a Court, is *sui generis*. partaking neither of the harshness and rigidity of the criminal law nor of the civil proceedings requiring less particularity.[103]

The Senate denied the motion to strike article VII.

Witness, Counsel for the Respondent Summoned as:

During the trial of Mr. Justice Chase in 1805, Luther Martin, counsel for the respondent, was sworn and examined as a witness on behalf of the respondent.[104]

Debate

Orders at the Trial:

A Senator may propose an order, but he may not explain or debate it. Any debate in open session would have to occur between the managers on the part of the House and the counsel for the respondent.

During the trial of Secretary of War Belknap in 1876, a Senator proposed an order fixing the time for further pleadings on behalf of the respondent, which was discussed by the counsel for the respondent and a manager on the part of the House of Representatives. At this point, Senator Allen Thurman of Ohio attempted to also debate the order but was reminded by the President pro tempore that debate was not in order.[105]

Debate by Senators on any question is not allowed in open session. Rule XXIV provides that all "the orders and decisions shall be voted on without debate."

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[99] March 31, 1936. 74-2, *Senate Journal,* p. 483.

[100] March 31-April 3, 1936, 74-2, *Senate Journal,* p. 483.

[101] April 3, 1936. 74-2, *Senate Journal* p. 483.

[102] March 31. 1936 74-2, *Senate Journal* p. 483.

[103] April 3, 1936. 74-2, *Senate Journal,* P. 484.

[104] February 15, 1805, 8-2, *Senate Journal,* p. 520.

[105] June 1, 1876. 44-1. *Record,* vol. 4 pt. 7. p. 160.

Under the rules governing impeachment trials, Senators are not permitted to engage in colloquies,[106] or to participate in any argument.[107]

A request to abrogate the rule requiring questions by Members of the Senate during an impeachment trial to be in writing,[108] or that a member of the San Francisco bar be permitted to sit with the House Managers to assist them in the development of the facts in an impeachment trial,[109] were held not to be debatable.

Adoption of Senate Resolution 479, 99th Congress, 2d Session, further clarified Rules VII and XIX regarding debate and colloquy by Senators. Rule VII was changed by the insertion of the phrase "without debate" in the second sentence. The intent of this change is to make it clear that a decision by the Senate to overrule or sustain a ruling of the Presiding Officer is not to be deliberated in open session. This change would conform Rule VII with the other impeachment rules, e.g. Rule XXIV, which provide that decisions on these and other matters shall be "without debate, except when the doors shall be closed for deliberation." The Senate added three new sentences to Rule XIX, which read as follows: The parties or their counsel may interpose objections to witnesses answering questions propounded at the request of any Senator and the merits of any such objection may be argued by the parties or their counsel. Ruling on any such objection shall be made as provided in Rule VII. It shall not be in order for any Senator to engage in colloquy. August 16, 1986, Congressional Record (for August 15, 1986) pp. S11902–S11903.)

Organizational Questions Prior to Trial and Debate Thereof:

When the articles of impeachment relating to Judge Louderback were presented in 1933, it was moved by Senator George Norris of Nebraska that further consideration of the impeachment charges be deferred until 2:00 o'clock on the first day of the first session of the 73rd Congress. Senator Henry Ashurst of Arizona asked for recognition to debate the motion, but the Vice President held that, inasmuch as the motion related to a question of the Senate sitting as a court of impeachment, it was not debatable.[110] However, prior to the trial of Judge English in 1926, a motion was made that the trial commence on the 15th day of November. A point of order was raised that the matter was not debatable. The Vice President overruled the point of order with the following statement:

> The Chair will state that in impeachment trials had heretofore such questions have been considered as debatable, and that Rule XXII,[111] which refers to the decision of questions without debate, has been held to apply after the trial has actually commenced. The Senate has always debated the question of the time at which the trial should start, and the Chair is inclined to hold that debate is in order on a question of this sort.

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[106] April 11, 1933, 73-1, *Record*, p. 1470.
[107] May 16, 1933, 73-1, *Journal*, p. 329. *Record*, p. 3467.
[108] See April 8, 1936, 74-2, *Record*, p. 5164.
[109] May 15, 1933, 73-1, *Journal*, p. 326, *Record*, p. 3395.
[110] March 3, 1933, 72-2, *Record*, p. 5473.
[111] This is now Rule XXIV.

> The Chair will further state that in the future he will regard Rule XXIII, in which it is stated that "orders, and decisions shall be made, and had by yeas and nays," as relating to the actual trial. The yeas and nays will be ordered on the pending question without demand, but in former trials of impeachments the yeas and nays have been ordered on questions upon the request of Senators present. Much time will be saved if the inconsequential questions which come up shall be decided in the ordinary methods by a viva voce vote. On a question of the importance of the pending one, the Chair holds that a yea-and-nay vote is required without a demand from one-fifth of the Members present.[112]

Rule XXIII [113] on debate was held not to apply to a question arising during the organization for the trial of Andrew Johnson by a ruling of the Chief Justice.[114]

Division of the Question

Article Not Divisible:

Senate Resolution 479 (99th Congress, 2d Session), agreed to on August 16, 1986, changed Rule XXIII in several ways. The Committee Report (Senate Report 99-401) states, in part:

> "Rule XXIII, which deals generally with voting the final question, is amended in several important ways. A pair of new restrictions is added at the beginning of the rule. These read as follows:
>
> > "An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial. Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment unless the Senate adjourns for a period not to exceed one day or adjourns sine die.
>
> "The portion of the amendment effectively enjoining the division of an individual article into separate specifications is proposed to permit the most judicious and efficacious handling of the final question both as a general matter and, in particular, with respect to the form of the articles that proposed the impeachment of President Richard M. Nixon. The latter did not follow the more familiar pattern of embodying an impeachable offense in an individual article but, in respect to the first and second of those articles, set out broadly based charges alleging constitutional improprieties followed by a recital of transactions illustrative or supportive of such charges. The wording of Articles I and II expressly provided that a conviction could be had thereunder if supported by "one or more of the" enumerated specifications. The general view of the Committee at that time was expressed by Senators Byrd and Allen, both of whom felt that division of the articles in question into potentially 14 separately voted specifications might "be time consuming and confusing, and a matter which could create

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[112] May 5, 1926. 69-1. *Senate Journal*, pp. 594-95.

[113] Presently Rule XXIV.

[114] March 6, 1868, 40-2, *Congressional Globe*, p. 1697.

> great chaos and division, bitterness, and ill will * * *." Accordingly, it was agreed to write into the proposed rules language which would allow each Senator to vote to convict under either the first or second articles if he were convinced that the person impeached was "guilty" of one or more of the enumerated specifications.
>
> "The provision requiring the Senate to dispose of the final question once it has commenced voting the articles of impeachment or, alternatively, either adjourn for 24 hours or without day, is intended to prevent a recurrence of the incident during the Johnson trial when the Senate having failed to convict on the first article to be voted (No. 11) proceeded to adjourn for fourteen days before considering the other articles. Thereafter, when the Senate again failed to convict on two of the remaining 10 articles, it adjourned without day. Committee members were agreed that such a course of action could have unsettling consequences which should be avoided at all costs."

Articles Of Impeachment:

The sixth article of impeachement was divided during the trial of West Humphreys in 1862. The Senate was about to vote on article VI of the articles of impeachment which read as follows:

> Article 6. That the said West H. Humphreys, in the year of our Lord one thousand eight hundred and sixty-one, within the State of Tennessee, and with intent to subvert the authority of the government of the United States, to hinder and delay the due execution of the laws of the United States, and to oppress and injure citizens of the United States, did unlawfully act as judge of an illegally constituted tribunal within said State, called the district court of the Confederate States of America, and as judge of said tribunal last named said West H. Humphreys, with the intent aforesaid, then and there assumed and exercised powers unlawful and unjust, to wit: In causing one Perez Dickinson, a citizen of said State, to be unlawfully arrested and brought before him, as judge of said alleged court of said Confederate States of America, and required him to swear allegiance to the pretended government of said Confederate States of America; and upon the refusal of said Dickinson so to do, the said Humphreys, as judge of said illegal tribunal, did unlawfully, and with the intent to oppress said Dickinson, require and receive of him a bond, conditioned that while he should remain within said State he would keep the peace; and as such judge of said illegal tribunal, and without authority of law, said Humphreys then and there decreed that said Dickinson should leave said State.
>
> 2. In decreeing within a said State, and as judge of said illegal tribunal, the confiscation to the use of said Confederate States of America of property of citizens of the United States, and especially of property of one Andrew Johnson and one John Catron.
>
> 3. In causing, as judge of said illegal tribunal, to be unlawfully arrested and imprisoned within said State citizens of the United States, because of their fidelity to their obligations as citizens of the United States, and because of their rejection of,

> and their resistance to, the unjust and assumed authority of said Confederate States of America.[115]

At this point a Senator requested a division of the question and the article was divided into three parts with separate votes being taken on each part. On the first section he was found "not guilty," and was found "not guilty" on the second section, but on the third, two-thirds of the Senators present voted him "guilty" and the President pro tempore announced that he was therefore "guilty" as charged under the sixth article.[116]

Final Judgment:

In two trials, the question of final judgment was held to be divisible, and division was requested.

In the trial of Robert W. Archbald, following a vote in which conviction was obtained on five of the thirteen articles, the following resolution was introduced, divided, and agreed to, the first part by voice vote, and the second by yeas and nays. The original text of the resolution was as follows:

> *Ordered,* That the respondent, Robert W. Archbald, circuit judge of the United States from the third judicial circuit and designated to serve in the Commerce Court, be removed from office and be forever disqualified from holding and enjoying any office of honor, trust, or profit under the United States.
>
> On motion by Mr. Root, that the doors be closed.[117]

The first part as divided was as follows:

> *Ordered,* That the respondent, Robert W. Archbald, circuit judge of the United States from the third judicial circuit and designated to serve in the Commerce Court, be removed from office.[118]

The second part as divided was as follows:

> And be forever disqualified from holding and enjoying any office of honor, trust, or profit under the United States.[119]

In the trial of Halsted L. Ritter, the following order for judgment was introduced:

> The Senate hereby orders and decrees and it is hereby adjudged that the respondent, Halsted L. Ritter, United States district judge for the southern district of Florida, be, and he is hereby, removed from office, and that he be, and is hereby, forever disqualified to hold and enjoy any office of honor, trust, or profit under the United States, and that the Secretary be directed to communicate to the President of the United States and to the House of Representatives the foregoing order and judgment of the Senate, and transmit a copy of same to each.[120]

Following its introduction, a division was requested, and while it was agreed that the order was subject to division, it was also agreed that once divided the Senate would be voting first on the question of removal from office, which had already been accomplished, and therefore the order was withdrawn.

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[115] June 26, 1862, 37-2, *Senate Journal,* p. 900.
[116] June 26, 1862. 37-2, *Senate Journal,* pp. 901–02.
[117] January 13, 1913, 62-3, *Senate Journal,* p. 332.
[118] Ibid., p. 332.
[119] January 13, 1913, 62-3, *Senate Journal,* p. 332.
[120] April 17, 1936, 74-2, *Record,* p. 5606.

Evidence

Admissibility of:

The Presiding Officer can either rule on questions of evidence directly or can submit them to the Senate in the first instance for a decision, or once having ruled, his opinion is subject to appeal.

When the judgment of the Senate is asked for, after the Presiding Officer has ruled on a question of evidence, the form is "Is the evidence admissible?"[121] When the judgment of the Senate is asked for in the first instance, the form of the question is the same.[122]

In an argument over the admissibility of evidence, it is not in order to read the evidence which has been objected to.[123] Furthermore, when evidence is being offered, its presentation may not be interrupted by legislative business or questions which are incidental to the progress of the trial.[124] Once a document has been offered and read as evidence, there is still the possibility of raising an objection to its admissibility as evidence.[125]

Determination By Presiding Officer During Impeachment Trial

The role of the Presiding Officer during an impeachment trial was further emphasized by changes to Rule VII, adopted by the Senate on August 16, 1986 (S. Res. 479, 99th Congress, 2d Session). The Committee Report states, in part:

> "Rule VII, which describes the duties of the Presiding Officer of the Senate in preparing the Chamber for trial, and the duties of the Presiding Officer on the trial regarding the conduct of proceedings and the ruling on questions of evidence and incidental questions, is amended in three parts. The first of these amendments enumerates and emphasizes the kinds of rulings the Presiding Officer is expected to make by adding to the words questions of evidence: 'including, but not limited to, questions of relevance, materiality, and redundancy.'" (Senate Report 99-401.)

Leading Questions Ruled Out:

Leading questions have been ruled out and witnesses were admonished to observe established procedure.

On December 4, 1912, in the Senate trial of Judge Robert W. Archbald, during the direction examination of a witness on behalf of the House of Representatives, Mr. Worthington, a counsel for the respondent, objected to a question propounded by Mr. Manager Edwin Yates Webb and said:

> One moment. I submit, Mr. President, we had as well try this case with some appearance of conformity to the rules of a

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[121] February 14, 1905, 58-3, *Record,* p. 2540.
[122] February 14, 1905, 58-3, *Record,* p. 2540.
[123] February 23, 1905, 58-3, *Record,* pp. 3165-66.
[124] April 3, 1868, 40-2, *Congressional Globe Supplement,* p. 99.
[125] April 2, 1868, 40-2, *Congressional Globe Supplement,* pp. 81-82.

court. That was a leading question, which ought never to have been asked and should not be allowed to be answered.

The President pro tempore ruled:

> Counsel, as far as possible, will avoid leading questions.

During the examination of the same witness by Mr. Webb, Mr. Worthington objected to a question asked the witness by the manager as being a leading question. The witness, however, answered the question. Note the following:

Mr. Worthington stated:

> As the witness has already answered the question, for the present purposes it is futile to proceed. I think the witness should be cautioned, when objection is made, not to answer a question until the Presiding Officer or the Senate has ruled upon it.
>
> The President Pro Tempore. That is a very proper suggestion. The witness will be governed by that. Hereafter when there is an objection to testimony the witness will not reply until after the matter has been passed upon.[125a]

Presentation of, During Final Arguments, Out of Order:

During the trial of Andrew Johnson in 1868, one of the managers on the part of the House of Representatives wished to examine witnesses during his final arguments. The Chief Justice responding to an objection from a Senator, said that it would be necessary and proper to obtain an order of the Senate before allowing evidence to be presented during the final argument.[126] Just such an order was obtained in 1805 in the trial of Mr. Justice Chase to allow the testimony of a witness during the final argument of the managers on the part of the House.[127]

Questions of, Submitted to Senate:

During the trial of Judge Archbald in 1912, the President pro tempore of the Senate made the following statement regarding the admissibility of evidence:

> Before taking action in regard to this question the Chair desires to make a statement to the Senate. Anticipating that questions of the admissibility of evidence would arise, the present occupant of the Chair has examined former impeachment cases in order to ascertain what was the practice of Presiding Officers themselves in regard to deciding questions of this character or of submitting them to the Senate. Upon examination it is found in former impeachment cases that very liberally, to say the least, the Presiding Officer had availed himself of the privilege of submitting the matter to the Senate. In the Andrew Johnson impeachment case in particular, which was presided over by the highest judicial officer in the land, Chief Justice Chase, almost invariably every question as to the admissibility of evidence was submitted by him to the Senate for its determination. While the present occupant of the chair is not averse to taking responsibility in a matter that is alleged

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[125a] December 4, 1912, 62-3, *Record,* pp. 98–99.

[126] April 20, 1868, 40–2, *Congressional Globe Supplement,* p. 239.

[127] February 25, 1805, 8–2, *Senate Journal,* p. 523.

by the counsel to be peculiarly vital to the case, he feels that the matter should be submitted to the Senate. He is more inclined to that course by the fact that if one single Senator differed from the conclusion of the Chair he would have the right to have the vote taken by the Senate. Therefore, in this case the present occupant of the chair will submit to the Senate the question as to the admissibility of the evidence.[128]

Floor Privileges Granted to Persons to Sit with House Managers

The Clerk of the Committee on the Judiciary of the House of Representatives, by unanimous consent, was given permission to sit with the managers on the part of the House during the Louderback and the Ritter impeachment trials.[129] Likewise, a special agent of the Federal Bureau of Investigation and an assistant to the counsel for the respondent were granted floor privileges during the Ritter impeachment trial.[130]

Galleries

Decorum, Cleared to Maintain:

At the conclusion of the address by the counsel for President Johnson, the following occurred:

> As Mr. Manager Bingham concluded there were manifestations of applause in different portions of the galleries, with cheers.
>
> The Chief Justice. Order! Order! If this be repeated the Sergeant-at-Arms will clear the galleries.
>
> This announcement was received with laughter and hisses by some persons in the galleries, while others continued the cheering and clapping of hands.
>
> Mr. Grimes. Mr. Chief Justice, I move that the order of the court to clear the galleries be immediately enforced.
>
> The motion was agreed to.
>
> The Chief Justice. The Sergeant-at-Arms will clear the galleries. (Hisses and cheers and clapping of hands in parts of the galleries.) If the offense be repeated the Sergeant-at-Arms will arrest the offenders.[131]

Tickets to, During the Trial of President Andrew Johnson:

On March 10, 1869, the following order was adopted regarding the admission of persons to the Senate during the trial of President Johnson:

> *Ordered,* First. That during the trial of the impeachment now pending no persons besides those who now have the privilege of the floor, and clerks of the standing committees of the Senate, shall be admitted to that portion of the Capitol set apart for the use of the Senate and its officers, except upon tickets to be used (sic) [issued?] by the Sergeant-at-Arms. The

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[128] December 4, 1912, 62-3, *Record,* p. 106.

[129] May 15, 1933, 73-1, *Journal,* p. 326, *Record,* p. 3395; April 8, 1936, 74-2, *Journal,* p. 497, *Record,* p. 5132.

[130] April 8, 1936, 74-2, *Journal,* p. 497, *Record,* p. 5132.

[131] May 6, 1868. 40-2, *Congressional Globe Supplement,* p. 406.

number of tickets shall not exceed one thousand. Tickets shall be numbered and dated, and be good only for the day on which they are dated.

Second. The portion of the gallery set apart for the diplomatic corps shall be exclusively appropriated to it, and forty tickets of admission thereto shall be issued to the Baron Gerolt for the foreign legations.

Third. Four tickets shall be issued to each senator; four tickets each to the Chief Justice of the United States and the Speaker of the House of Representatives; two tickets to each member of the House of Representatives; two tickets each to the associate justices of the Supreme Court of the United States; two tickets each to the chief justice and associate justices of the supreme court of the District of Columbia; two tickets to the chief justice and each judge of the Court of Claims; two tickets to each cabinet officer; two tickets to the General commanding the army; twenty tickets to the private Secretary of the President of the United States, for the use of the President; and sixty tickets shall be issued by the President *pro tempore* of the Senate to the reporters of the press. The residue of the tickets to be issued shall be distributed among the members of the Senate in proportion to the representation of their respective States in the House of Representatives, and the seats now occupied by the senators shall be reserved for them.[132]

House of Representatives

Attendance of Members at Trial:

On March 20, 1868, the House of Representatives agreed to the following resolution:

> *Resolved,* That on the days when the Senate shall sit for the trial of the President upon the articles of impeachment exhibited by the House of Representatives, the House, in Committee of the Whole, will attend with the managers at the bar of the Senate at the hour named for the commencement of the proceedings.[133]

This prompted the following message from the Senate:

> . . . the Senate is in its Chamber and ready to proceed on the trial of Andrew Johnson, President of the United States, and that seats are provided for the accommodation of the Members.[134]

In the Belknap case, however, the House was represented by its managers only.[135]

Notification of Each Day's Sitting by the Senate:

The Senate sitting as a court of impeachment has on occasion issued orders that each day the House of Representatives be notified that it is proceeding with the impeachment trial. For example, see the following order adopted during the trial of Judge Peck:

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[132] March 10, 1868, 40-2, *Journal,* pp. 808-09.

[133] March 20, 1868, 40-2, *House Journal,* pp. 549-50.

[134] March 23, 1868, 40-2, *House Journal,* p. 561.

[135] April 17, 1876, 44-1, *House Journal,* p. 814.

> *Ordered,* That the Secretary notify the House of Representatives, from day to day, that the Senate is sitting as a high court of impeachment for the trial of James H. Peck, judge of the district court of the United States for the district of Missouri.[136]

Journal

Rule IV, paragraph 1, of the Legislative Rules of the Senate, provides for a separate Journal in impeachment trials as follows:

> The legislative, the executive, the confidential legislative proceedings, and the proceedings when sitting as a Court of Impeachment, shall each be recorded in a separate book.

Leave To Print Opinions Granted

Senators, by order to the Senate, were granted permission in the Louderback trial to file opinions in writing "within 2 days after the final vote," for publication in the printed proceedings of the case.[137]

Legislative Business Permitted To Interrupt Trial

On April 8, 1936, during the trial of Halsted L. Ritter, the Majority Leader, Senator Joseph Robinson, of Arkansas, asked unanimous consent to interrupt the impeachment proceedings in order that a message might be received from the House of Representatives and "that the Senate proceed with the consideration of legislative business." There was no objection.[138]

Likewise, on April 15, 1936, Senator Robinson, of Arkansas, obtained unanimous consent to temporarily suspend the impeachment proceedings to allow the Senate to receive a message from the House of Representatives.[139]

During the trial of Secretary of War William Belknap, the Senate interrupted its impeachment proceedings to receive a message from the House of Representatives.[140]

During the same trial, a Senator asked that the impeachment proceedings might be suspended in order to make a report from a committee of conference and unanimous consent was granted for that purpose.[141]

A Senator may not of right, however, call up legislative business during impeachment proceedings. During the trial of Andrew Johnson in 1868, Senator Henry Anthony of Rhode Island proposed to call up for consideration a matter of legislative business, whereupon the Chief Justice said:

> It is not in order to call up any business transacted in legislative session.[142]

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[136] December 24, 1830, 21-2, *Senate Journal*, p. 329.
[137] May 24, 1933, 73-1, *Journal*, p. 339, Record, p. 4083.
[138] April 8, 1936, 74-2, *Record*, p. 5129.
[139] April 15, 1936, 74-2, *Record*, p. 5505.
[140] July 10, 1876, vol. 4, part 7, 44-1, *Record*, p. 230.
[141] July 19, 1976, vol. 4, part 7, *Record*, p. 282.
[142] April 3, 1868, 40-2, *Congressional Globe Supplement*, p. 99.

Lie Over One Day, Orders

During the trial of Andrew Johnson, early in the trial, the Chief Justice ruled that a proposed order must lie over one day for consideration pursuant to the then existing Senate legislative rules.[143]

At the close of the trial, however, when a motion was made to rescind the order of the Senate concerning the method of voting on the articles of impeachment, the Chief Justice again ruled that a single objection would force the resolution to lie over one day, and his ruling was overturned by a vote of 29 to 25.[144]

Managers and Counsel

Appearance of:

After trial of an impeachment had proceeded for several days, the formality of announcement by the Doorkeeper of appearance in the Chamber of the managers and the respondent was by consent dispensed with.

On July 29, 1912, at the opening of the trial of the impeachment of Robert W. Archbald, the Doorkeeper of the Senate announced formally the appearance of the respondent and the managers on the part of the House of Representatives.[145]

This ceremony continued to be observed each day until December 3, 1912, when Mr. Henry D. Clayton, of the managers on the part of the House of Representatives, suggested:

> Mr. President, if it is agreeable to the Senate sitting as a Court of Impeachment, hereafter the managers on the part of the House of Representatives will appear without the formality of an announcement.

To which Mr. Worthington, of counsel, on behalf of the respondent, added:

> I presume that might apply. Mr. President, to the counsel for the respondent and to the respondent himself.

The President pro tempore said:

> The Chair will give proper direction in that regard. Proper order will be given in the premises.

The appearance of the managers and the respondent was not thereafter announced.[146]

Position in Senate Chamber During Examination of Witnesses:

The Senate prefers that managers and counsel, in examining witnesses in an impeachment trial, shall stand in the center aisle. But generally their posture and position have been left to their own judgment and preference.

On February 15, 1905, in the trial of Judge Charles Swayne, the Chair suggested that the managers in examining witnesses should stand in the center aisle of the Senate Chamber, near the rear row of seats, so that the answers of witnesses might be heard readily by the Senators.

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[143] April 11, 1868, 40-2, *Senate Journal*, p. 887.
[144] May 26, 1868, 40-2, *Senate Journal*, p. 946.
[145] July 29, 1912, 62-2, *Record*, p. 9795.
[146] December 3, 1912, 62-3, *Record*, p. 20.

Later in the trial, however, Mr. Anthony Higgins, a counsel for the respondent, insisted that he must stand by the table in examining witnesses, as he needed to consult certain documents.[147]

Generally speaking, however, the managers and counsel stood in the center aisle while conducting the examination of witnesses during that trial.

On December 4, 1912, in the trial of Judge Archbald, Mr. Worthington, a counsel for the respondent, inquired:

> Mr. President, may I ask a question? The practice differs. In some courts it is required that counsel examining a witness shall stand: but it is not customary where I have been; and I presume it is a matter about which the examining counsel or manager may use his judgment.
>
> The PRESIDENT PRO TEMPORE. Absolutely, on both sides. The managers and counsel may assume such posture as they prefer.[148]

On the following day, in concluding the examination of a witness. Mr. Edwin Yates Webb, a manager on the part of the House of Representatives, said:

> It has been suggested that the few remaining questions which I am to ask this witness may be heard more distinctly by standing at this point in the Chamber.

Mr. Webb then concluded the examination standing in the center aisle.[149]

Proposals of, Denied:

The Senate on various occasions had declined the managers and counsel for the respondent their proposals. Only two examples are cited below:

In the Belknap trial, after a motion had been submitted by Mr. Manager Lor, Mr. Matt. H. Carpenter, a counsel for the respondent offered this motion:

> That the further hearing and trial of this impeachment of William W. Belknap be continued to the first Monday of December next.

In argument supporting the motion the counsel for the respondent urged that in the existing political excitement a fair trial was not likely to result. The precedents of the Blount and Peck impeachments were cited to justify the postponement.

The Senate having retired in closed session for consultation (which debates were not public nor reported), Senator Edmunds moved that the motion for postponement be denied.

Senator Sherman, of Ohio, moved to amend by substituting the following:

> That the President pro tempore ask the managers if they desire to be heard on the pending motion of Mr. Carpenter, of counsel for respondent.

This motion was rejected by 28 yeas to 31 nays.

Senator Edmunds' motion, that the request for a postponement be not granted, was agreed to, 59 yeas to 0 nays.

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[147] February 15, 1905, 58–3, *Record*, pp. 2615, 2620.

[148] December 4, 1912, 62–3, *Record*, p. 98.

[149] December 5, 1912, 62–3, *Record*, p. 152.

Thereupon the Senate returned to their Chamber and the President pro tempore said:

> The Presiding Officer is directed to state to the counsel for the respondent that their motion is denied.

On another occasion during the same trial, the Senate overruled the motion of the managers that the evidence on the question of the jurisdiction of the Senate in the Belknap case be given before the arguments relating thereto.[150]

Managers on the Part of the House

See also under "Managers and Counsel."

Assistants Allowed Floor Privileges:

During the trial of Halsted L. Ritter, the managers on the part of the House asked unanimous consent to have an assistant sit with the managers. There was no objection.[151]

During the trial of Judge Louderback in 1933, the managers on the part of the House were granted permission by a vote of the Senate to have the Clerk of the House Committee on the Judiciary and a private member of the Bar to sit with them on the Senate floor.[152]

Decline to Answer Senator's Question:

During the trial of Andrew Johnson, in response to a broad question as to what was going to be proved and when, one of the House managers said it was not his duty to answer so general a question,[153] and the question went unanswered.

Objections to Senators' Questions:

During the trial of Andrew Johnson, the Chief Justice upheld the right of the managers to object to a question propounded by a Senator with the following statement:

> When a member of the court propounds a question, it seems to the Chief Justice that it is clearly within the competency of the managers to object to the question being put and state the grounds for that objection, as a legal question. It is not competent for the managers to object to a member of the court asking a question; but after the question is asked, it seems to the Chief Justice that it is clearly competent for the managers to state their objections to the questions being answered.[154]

On another occasion the Senate decided that it might allow questions from a Senator to a witness even though both the managers and the counsel for the respondent objected.[155]

Selection of by House:

The form for the selection of managers on the part of the House of Representatives in an impeachment trial has varied. For example, in the trial of West Humphreys the managers were appointed by the Speaker of the House and in his appointments all but one selected belonged to the majority party.[156]

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[150] April 27, 1976, 44-1, *Senate Journal*, pp. 920-23; *Record* of trial, pp. 10-15.

[151] April 8, 1936, 74-2 *Senate Journal*, p. 497.

[152] May 15, 1933, 73-1, *Record*, p. 3394; May 15, 1933, 73-1, *Senate Journal*, p. 326.

[153] April 1, 1886, 40-2, *Congressional Globe Supplement*, pp. 70-71.

[154] April 13, 1868, 40-2, *Congressional Globe Supplement*, pp. 169-70.

[155] July 11, 1876, 44-1, *Senate Journal*, p. 973.

In the trial of Charles Swayne, the Speaker of the House was authorized to appoint seven managers, four of whom belonged to the majority party, and three to the minority. Five of seven were members of the Judiciary Committee.[157]

In other cases, the managers have been chosen by ballot. This was done in the Belknap case.[158] the Blount case,[159] the Pickering case,[160] the Chase case,[161] the Peck case,[162] and the Johnson case.[163] The most recent practice has been to adopt a resolution in the House of Representatives naming the managers on the part of the House. For example, the following resolution was adopted in 1933 in the trial of Judge Louderback:

> *Resolved,* That Hatton W. Sumners, Gordon Browning, Malcolm C. Tarver, Fiorello H. LaGuardia, and Charles I. Sparks, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Harold Louderback, United States district judge for the northern district of California; and said managers are hereby instructed to appear before the Senate of the United States and at the bar thereof in the name of the House of Representatives and of all the people of the United States to impeach the said Harold Louderback of misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment against said judge which have been agreed upon by the House; and that the said managers do demand the Senate take order for the appearance of said Harold Louderback to answer said impeachment, and demand his impeachment, conviction, and removal from office.[164]

In the trial of Judge Ritter in 1936, the form of the resolution was as follows:

> *Resolved,* That Hatton W. Sumners, Randolph Perkins, and Sam Hobbs, Members of this House, be, and they are hereby, appointed managers to conduct the impeachment against Halsted L. Ritter, United States district judge for the southern district of Florida; that said managers are hereby instructed to appear before the Senate of the United States and at the bar thereof in the name of the House of Representatives and of all the people of the United States to impeach the said Halsted L. Ritter of high crimes and misdemeanors in office and to exhibit to the Senate of the United States the articles of impeachment against said judge which have been agreed upon by this House; and that the said managers do demand that the Senate take order for the appearance of said Halsted L. Ritter to

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[156] May 20, 1862, 37-2, *House Journal,* pp. 717, 718.
[157] January 21, 1905, 58-3, *House Journal,* p. 1202.
[158] March 30, 1876, 44-1, *House Journal,* pp. 696-703.
[159] January 30, 1798, 5-2, *House Journal,* p. 154.
[160] December 30, 1803, 7-2, *House Journal,* p. 507.
[161] December 5, 1804, 8-2, *House Journal,* pp. 44.
[162] May 1, 1830, 21-1, *House Journal,* pp. 591-96.
[163] March 2, 1868, 40-2, *House Journal,* pp. 450-51.
[164] February 27, 1933, 72-2, *Record,* p. 5177.

answer said impeachment, and demand his impeachment, conviction, and removal from office.[165]

Stand at Desk in Front of Chair to Read Articles of Impeachment:

On March 10, 1936, following the first appearance of the managers in the trial of Halsted L. Ritter, the Vice President, John Nance Garner, made the following statement:

> The VICE PRESIDENT. Mr. Manager Hobbs will proceed, and the Chair will take the liberty of suggesting that he stand at the desk in front of the Chair, as from that position the Senate will probably be able to hear him better.

The manager took the place suggested by the Vice President.[166]

Motions and Orders

Lie Over One Day:

See "Lie Over One Day, Orders."

Reduced to Writing:

Rule XIX of the Senate Rules of Impeachment provides that all motions and orders proposed by a Senator except to adjourn shall be reduced to writing.

Oaths to Senators

Form of, Given Each Senator:

The form of oath administered to each Senator, as set forth under Rule XXV, is as follows:

> I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of ——— ———, now pending, I will do impartial justice according to the Constitution and laws: So help me God.

Records Kept of Senators Taking Oaths After Trial Begins:

On March 12, 1936, during the trial of Halsted Ritter, it was announced that it was the duty of the Journal Clerk to keep the names of Senators who had taken the oath since Senators took the oath en bloc and there would be no other record.[167]

Senators Appearing Late, Take Oath:

In the trial of Secretary of War Belknap in 1876, Senator James Alcorn of Mississippi appeared for the first time on May 15th; the trial had begun on April 5th. Nevertheless, the Presiding Officer administered the oath to Senator Alcorn and he took his place in the Senate.[168]

Rule III of the impeachment rules provides in part as follows:

> . . . the Presiding Officer shall administer the oath hereinafter provided to the members of the Senate then present and to the other members of the Senate as they appear, whose duty it shall be to take the same.

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[165] House Resolution 439, 74-2, March 6, 1936.

[166] March 10, 1936, 74-2, *Record,* pp. 3485-86.

[167] March 12, 1936, 74-2, *Record,* p. 3646.

[168] May 15, 1876, 44-1, *Senate Journal,* p. 933.

Senators Taking Oath After Trial Begins Do Not Take It in Legislative Session:

On March 12, 1936, during the conduct of regular legislative business and prior to the hour of 1 o'clock, at which time the Senate would resolve itself into a court of impeachment, the following occurred:

> Mr. McNARY. Mr. President, I am advised that the junior Senator from Vermont (Mr. Gibson) desires to take the oath as a juror in the impeachment proceedings.
>
> The VICE PRESIDENT. After a thorough survey of the situation, the best judgment of the Chair is that Senators who have not heretofore taken the oath as jurors of the court should take it after the Senate resolves itself into a court; all Senators who have not as yet taken the oath as jurors will take the oath at that time.[169]

Opening Statements

Adoption of the Usual Order:

On December 3, 1912, during the trial of Robert Archbald, the Senate adopted an order on opening statements, which form has been used in other trials, namely:

> *Ordered,* That the opening statement on behalf of the managers shall be made by one person, to be immediately followed by one person who shall make the opening statement on behalf of the respondent.[170]

An identical order with regard to opening statements was adopted during the trial of Halsted L. Ritter in 1936.[171]

> Mr. LOAN. I send to the desk an order and ask for its adoption.
>
> The VICE PRESIDENT. The clerk will read the proposed order.
>
> The legislative clerk read as follows:
>
> *Ordered,* That the opening statement on the part of the managers shall be made by one person, to be immediately followed by one person who shall make the opening statement on behalf of the respondent.
>
> The VICE PRESIDENT. Is there objection to the order? The Chair hears none, and the order is entered.[172]

During the trial of Judge Louderback in 1933, an order was adopted providing that the opening statement on behalf of the managers and on behalf of the respondent shall each be made by one person.[173]

Limitations On:

The opening address of an impeachment trial is for the purpose of outlining what is expected to be proved. It is not for the purpose of introducing evidence to substantiate the charges.

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[169] March 12, 1936, 74-2, *Record,* p. 3641.

[170] December 3, 1912, 62-3, *Record,* p. 20.

[171] April 6, 1936, 74-2, *Senate Journal,* p. 494.

[172] April 6, 1936, 74-2, *Record,* p. 4971.

[173] May 15, 1933, 73-1, *Senate Journal,* p. 326.

During the trial of Judge Swayne in 1905, the managers on the part of the House twice had to be cautioned by the Presiding Officer upon objection of the counsel for the respondent to refrain from introducing evidence in their opening statements.[174]

During the same trial, while the counsel for the respondent was making his opening statement, he asked the Secretary to read extracts from a number of decisions of the Supreme Court of the United States. During the reading of these extracts, the Presiding Officer interrupted to make the point that the opening address should be confined to a statement of the issues raised in the case and what the parties propose to prove. It should not include an extended argument on the whole case and should be concluded quickly.[175]

The trial of Robert Archbald in 1912 initiated a new procedure on opening statements in which the opening statement for the respondent was made at the beginning of the case instead of at the close of testimony on behalf of the managers. On December 3, 1912, Mr. Worthington, counsel for the respondent in the impeachment trial of Robert Archbald, made the following statement:

> Mr. President and Senators, for the first time in an impeachment trail in this tribunal the opening statement for the respondent is to be made at the beginning of the case instead of at the close of the testimony on behalf of the managers. We have desired to do the testimony on behalf of the managers. We have desired to do this and are doing it with the acquiescence of the honorable managers for two reasons. One is that the Members of the Senate may know when the introduction of testimony is going on what are the questions of fact in dispute. The other is that Senators may know from the beginning what we rely upon as the law of the case.[176]

Orders and Decisions

Rule XXIV, which deals with voting on orders and decisions and the procedure for going behind closed doors in order to deliberate these and other matters, was amended to incorporate the unanimous-consent procedure added to Rule XX by the adoption of Senate Resolution 479 (99th Congress, 2d Session) on August 16, 1986. The committee Report states: "Since many orders and decisions are believed to involve noncontroversial matters, it is the Committee's belief that they may be dispensed with without objections. However, in the event of objection, the yeas and nays may be had." Under the present rule "All orders and decision shall be made and had by yeas and nays." In place of this language the Committee substitutes "All orders and decisions may be acted upon without objection, or if objection is heard, the orders and decisions shall be voted on without debate 'by yeas and nays' ". (Senate Report 99-401).

See also: "Motions and Orders," "Reduced to Writing," and "Lie Over One Day, Orders."

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[174] February 10, 1905, 58-3, *Record*, pp. 2232-33.

[175] February 21, 1905, 58-3, *Record*, p. 2977.

[176] December 3, 1912, 62-3, *Record*, p. 26.

Papers Filed as Evidence Returned to District Court

In the Louderback trial, the Senate, by order, directed certain original papers filed as evidence returned to the United States District Court for the Northern District of California.[177]

Points of Order

When one point of order is pending during an impeachment trial, a second point of order cannot be made until the first is disposed of.[178]

Presiding Officer

Decisions Made by, During Trial:

During an impeachment trial the Presiding Officer decides on all forms not otherwise specifically provided for in Rule VII of the Rules of Procedure and Practices in an Impeachment:

> VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule on all questions of evidence including but not limited to, questions of relevancy, materiality, and redundancy of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision without debate; or he may at his option, in the first instance, submit any such question to a vote of the members of the Senate. Upon all such questions the vote shall be taken in accordance with the Standing Rules of the Senate.

This rule is in substance similar to the original rule adopted in 1805 during the trial of Judge Samuel Chase. The principal change was in the elimination of the word "court" during the 1868 trial of Andrew Johnson.

Rule VII was amended in three parts by the adoption of Senate Resolution 479, 99th Congress, 2d Session, on August 16, 1986. The first of these amendments enumerates and emphasizes the kinds of rulings the Presiding Officer is expected to make by adding to the words "questions of evidence" "including, but not limited to, questions of relevance, materiality, and redundancy."

The second change was the insertion of the phrase "without debate" in the second sentence. The intent of this change is to make it clear that a decision by the Senate to overrule or sustain a ruling of the Presiding Officer is not to be deliberated in open session. This change conforms Rule VII with the other impeachment rules, e.g. Rule XXIV, which provide that decisions on these and other matters shall be "without debate, except when the doors shall be closed for deliberation."

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[177] May 25, 1933, 73-1, *Journal*, p. 200, *Record*, p. 4142.

[178] March 6, 1868, 40-2, *Senate Journal*, pp. 810-11.

The third change to Rule VII is the deletion of the last sentence which effectively required the Senate to arrive at its decisions by voice vote unless the yeas and nays were demanded. The new language allows the Senate to vote its decisions "in accordance with the Standing Rules of the Senate," that is, by voice vote or by a division, or, when requested by one-fifth of the members present, by the yeas and nays. (Senate Report 99-401: 99th Congress, 2d Session.)

Duty to Expedite Trial:

On one occasion the Presiding Officer felt it his duty to admonish the managers and counsel not to waste time. See the following:

> While the Presiding Officer makes no criticism on the course of the examination and cross-examination, he desires to say that the time of the Senate is very precious, and he hopes that there will be as little time taken by immaterial questions, either by the managers or by counsel, as possible, and that we may get along with this case.[179]

Forms of Addressing, by Managers and Counsel:

Both the managers and the counsel use the form of address "Mr. President and Senators," [180] or simply "Mr. President." [181]

When the Chief Justice is the Presiding Officer, he can be addressed either as Mr. President or Mr. Chief Justice.[182]

Both the managers on the part of the House and the counsel for the respondent are required to rise and address the Chair before speaking.[183]

Naming of Presiding Officer:

During the trial of Judge Louderback in 1933, the following order was adopted to provide for a Presiding Officer in the absence of the Vice President or the President pro tempore:

> *Ordered,* That during the trial of the impeachment of Harold Louderback, United States district judge for the northern district of California, the Vice President, in the absence of the President pro tempore, shall have the right to name in open Senate, sitting for said trial, a Senator to perform the duties of the Chair.
>
> The President pro tempore shall likewise have the right to name in open Senate, sitting for said trial, or, if absent, in writing, a Senator to perform the duties of the Chair; but such substitution in the case of either the Vice President or the President pro tempore shall not extend beyond an adjournment or recess, except by unanimous consent.[184]

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[179] February 15, 1905, 58-3, *Record,* p. 2625.

[180] This was the form used in the Belknap trial.

[181] This form was used in the trial of William Blount.

[182] These terms were used interchangeably in the trial of Andrew Johnson.

[183] July 7, 1876, 44-1, Vol. 4, Part 7, *Record,* pp. 190-91.

[184] May 15, 1933, 73-1, *Senate Journal,* p. 328.

Putting the Question to Witnesses, to Managers and Counsel, and in Writing:

Orders and motions, except to adjourn, are reduced to writing when offered by Senators in impeachment trials, and the Presiding Officer in an impeachment trial is the medium for putting the questions to witnesses and motions and orders to the Senate, but questions asked by Senators in impeachment trials, whether of managers, counsel, or witnesses, must be in writing.

The present form and history of Rule XIX of the Senate sitting for impeachments:

Rule XIX of the "Rules of procedure and practice for the Senate when sitting in impeachment trials" is as follows:

> If a Senator wishes a question to be put to a witness, or to a manager, or to counsel of the person impeached, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer. The parties or their counsel may interpose objections to witnesses answering questions propounded at the request of any Senator and the merits of any such objection may be argued by the parties or their counsel. Ruling on any such objection shall be made as provided in Rule VII. It shall not be in order for any Senator to engage in colloquy.

This rule dates from the Chase trial in 1805.[185] In the revision of 1868,[186] preparatory to the trial of President Johnson, the form was modified by the insertion of the parenthetical clause and the use of the words "Presiding Officer" for "President." In 1986, the Rule was clarified and brought into conformance with the precedents by the adoption of S. Res. 479, 99th Congress, 2d Session.

Contrary to old Rule XIX, for impeachment trials, the Senate had allowed Senators to interrogate the managers and counsel for the respondent.

While the Senate was sitting for the Belknap trial, arguments, continuing from May 4 to May 8, 1876, were offered by the managers on the part of the House of Representatives and the counsel for the respondent on the question of the jurisdiction of the Senate to try a citizen not in civil office at the time of the presentation of articles of impeachment. In the course of these arguments, members of the Senate frequently interrupted the managers and coundel for respondent with questions,[187] relating to various points touched in the argument. These questions were generally presented in writing.

On July 20, 1876,[188] in the same trial, Mr. Manager William P. Lynde was submitting an argument in the final summing up of the case, when Mr. Eaton, a Senator from Connecticut, interrupted by saying:

> Mr. President, is it proper that I should ask the manager a question?

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[185] Eighth Congress, second session, *Senate Journal*, pp. 511-13, Annals, pp. 89-92.

[186] Fortieth Congress, second session, Senate Report No. 59, *Senate Journal*, pp. 813, 814; *Globe*, p. 1563.

[187] May 4-8, 1876, 44-1, *Record* of trial, pp. 33, 42, 43, 47, 60.

[188] July 20, 1876, 44-1, *Record* of trial, p. 296.

The President pro tempore (T. W. Ferry, of Michigan) said:

> It has been so ruled by the Senate.

Thereafter, both the managers and counsel for respondent were interrupted by questions.[189]

On July 12, 1876, in the trial of Belknap, Senator Edmunds, of Vermont, following the practice during that trial, proposed a question to counsel for the respondent.

Senator Conkling, of New York, raised a question of order as to the right of a Senator to interrogate counsel.

The President pro tempore (T. W. Ferry, of Michigan) said:

> The Senator from New York calls the attention of the Chair to the fact that the rule does not authorize the questioning of counsel, but of witnesses.* * * The rule will be read.
>
> XIX. If a Senator wishes a question to be put to a witness or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing and put by the Presiding Officer.
>
> * * * The Chair will state that in administering the rule he would not feel authorized to permit a question to be put to the counsel or the managers, for the rule provides only for Senators to question witnesses, and not counsel or managers to be questioned by them.* * * The Senator from New York has stated the point of order, and the Chair simply holds that under the rule No. 18, and which is the only one bearing upon the subject and upon which he rules, the Chair sustains the point of order.

Mr. Edmunds appealed, and on the question, "Shall the decision of the Chair stand as the judgment of the Senate?" there appeared 18 yeas, 21 nays. So the Chair was overruled, and the question proposed by Mr. Edmunds was put to counsel.[190]

On July 11, 1876, in that trial, several Senators had addressed verbal questions to the managers and to counsel for the respondent, Mr. Roscoe Conkling, a Senator from New York, having called attention to the rule, which he condemned as absurd, the President pro tempore (T. W. Ferry, of Michigan) said:

> As the Senator from New York has alluded to the fact that the question was not put in writing, the Chair will say that it has not been done in order to facilitate business, and a moment ago one of the Senators was about to reduce a question to writing and the Senator from New York stated that the practice had been otherwise.* * *
>
> The Chair to facilitate business has allowed questions to be put without being reduced to writing by the propounders.

Later, colloquies and objection having arisen, the President pro tempore ruled:

> The Chair will enforce the rule. Colloquies must cease. Objection has been made, and the Chair must enforce the rule. He will state that on the part of Senators, to guard against any breach of the rules and unpleasantness, he will require all questions to be reduced to writing; and then certainly there can be no debate. The counsel will proceed.

Mr. Richard J. Oglesby, a Senator from Illinois, asked:

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[189] *Ibid.*, pp. 296, 297, 315.

[190] July 12, 1876, 44-1, *Senate Journal*, pp. 976, 977; *Record* of trial, pp. 258, 259.

> Does the decision of the Chair, that no questions can be put hereafter without being reduced to writing, cover questions put by the court to one of the counsel?

The President pro tempore said:

> It covers all questions put by members of the Senate. The rule does not require the questions on the part of the parties to be reduced to writing unless so requested by the Chair or a Senator; but all questions put by members of the Senate the rule requires shall be put in writing.[191]

Again, on July 19, 1876, John S. Evans, a witness on behalf of the respondent, was on the stand, when Mr. Randolph, a Senator from New Jersey, proposed to ask orally a question. The suggestion being made that the question should be reduced to writing, Mr. Randolph urged that such had not been the practice.

The President pro tempore (T. W. Ferry, of Michigan) said:

> The Chair will observe at this time that so far as questions have been put to witnesses by Senators the rule in the recollection of the Chair has been observed until this time, and the Chair called the attention of the Senator from California, who put a question just now without reducing it to writing, to the fact that the rule required it to be done. The question having been put and it having been reduced to writing, by calling the attention of the Senator to the rule the Chair did his duty. Heretofore no questions have been put to witnesses, as the Chair recollects, without having been first reduced to writing.[192]

Quorum

Calls of, in Order During Trial:

During the trial of Andrew Johnson,

> Mr. Sherman moved that there be a call of the Senate; and
>
> The roll being called,
>
> It appeared that 44 senators were present and answered to their names.[193]

During the trial of Secretary of War Belknap:

> . . . a question was raised by Mr. Edmunds whether a quorum of the Senate was present, and
>
> The Presiding Officer directed the Secretary to count the Senate; and upon counting the Senate it appeared that a quorum was not present.
>
> Whereupon,
>
> On motion by Mr. Edmunds,
>
> The Senate sitting for the trial of the impeachment adjourned.[194]

Under recent practices, quorums are regularly called during a trial, but the Chair does not count to ascertain a quorum.

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[191] July 11, 1876, 44-1, *Record* of trial, pp. 248, 249.

[192] July 19, 1876, 44-1, *Record* of trial, p. 275.

[193] April 22, 1868, 40-2, *Senate Journal,* p. 921.

[194] June 16, 1876, 44-1, *Senate Journal,* p. 952.

Quorum for an Impeachment Trial Consists of a Quorum of the Senate, and not merely the Members Sworn for the Trial:

On December 3, 1912, during the trial of Robert Archbald, following a quorum call, the President pro tempore made the following statement:

> On the call of the roll 65 Senators are present. A quorum of the Senate is present.[195]

Respondent

Answer to Articles of Impeachment Received by Senate:

In the trial of Andrew Johnson in 1868, following the answer of the President, presented by his counsel, to the articles of impeachment, the Chief Justice submitted the following question to the Senate:

> Shall the answer of the respondent as read by his counsel be received and filed? and

It was determined in the affirmative.[196]

In the trial of Halsted Ritter in 1936, the following orders were considered and agreed to regarding the answer to the articles of impeachment:

> *Ordered,* That the answer of the respondent, Halsted L. Ritter, to the articles of impeachment, as amended, exhibited against him by the House of Representatives, be printed for the use of the Senate sitting in the trial of said impeachment.
>
> *Ordered,* That the Secretary of the Senate communicate to the House of Representatives an attested copy of the answer of Halsted L. Ritter, United States district judge for the southern district of Florida, to the articles of impeachment, and also a copy of the order entered on the 12th ultimo prescribing supplemental rules for the said impeachment trial.[197]

Appearance of and Request of Time to Answer Articles:

In an impeachment case, the writ of summons having been returned, the accused is called to appear to answer the articles.

On March 12, 1936, Judge Halsted Ritter appeared personally with his counsel and filed a formal entry of appearance as follows:

> IN THE SENATE OF THE UNITED STATES OF AMERICA SITTING AS A COURT OF IMPEACHMENT
>
> March 12, 1936.
>
> *The United States of America v. Halsted L. Ritter*
>
> The respondent, Halsted L. Ritter, having this day been served with a summons requiring him to appear before the Senate of the United States of America in the city of Washington, D.C., on March 12, 1936, at 1 o'clock in the afternoon to answer certain articles of impeachment presented against him by the House of Representatives of the United States of Amer-

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[195] December 3, 1912, 62–3, *Record,* p. 21.

[196] March 23, 1868, 40–2, *Senate Journal,* p. 860.

[197] April 3, 1936, 74–2, *Senate Journal,* p. 494.

ica, now appears in his proper person and also by his counsel, who are instructed by this respondent to inform the Senate that respondent stands ready to file his pleadings to such articles of impeachment within such reasonable period of time as may be fixed.

Dated March 12, 1936.

HALSTED L. RITTER, *Respondent.*
CARL T. HOFFMAN,
FRANK P. WALSH,
Counsel for Respondent.[198]

In the trial of Judge Archbald in 1912, on the motion of the counsel for the respondent, and over the protest of the managers for the House of Representatives, the Senate granted the respondent at his first appearance ten days in which to answer the articles of impeachment, based on the following request:

IN THE SENATE OF THE UNITED STATES, SITTING AS A COURT OF IMPEACHMENT

United States v. Robert W. Archbald

The respondent, Robert W. Archbald, having been served with a summons requiring him to appear before the Senate of the United States at their Chamber in the city of Washington, on Friday, July 19, 1912, at 12:20 o'clock in the afternoon, to answer certain articles of impeachment presented against him by the House of Representatives of the United States, now appears in his proper person and also by his counsel, Robert W. Archbald, Jr., and Augustus S. Worthington, who are instructed by this respondent to apply to this court for a reasonable time for the preparation of his answer to said articles of impeachment.

R. W. ARCHBALD.[199]

After the above was read and placed on file, the counsel for the respondent then made the following motion:

IN THE SENATE OF THE UNITED STATES, SITTING AS A COURT OF IMPEACHMENT

United States v. Robert W. Archbald

The respondent by his counsel, now comes and moves the court to grant him the period of ——— days in which to prepare and present his answer to the articles of impeachment presented against him herein.

R. W. ARCHBALD, JR.
A. S. WORTHINGTON.[200]

The motion was amended as follows and agreed to:

Ordered, That the respondent present the answer to the articles of impeachment at 12 o'clock and 30 minutes post meridian, on the 29th day of July, 1912.[201]

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[198] March 12, 1936, 74-2, *Record,* pp. 3646-47.

[199] July 19, 1912, 62-2, *Senate Journal,* p. 630.

[200] *Idid.,* p. 630.

[201] July 19, 1912, 62-2, *Senate Journal,* p. 630.

There has been some variation in the appearance by respondents. Judge Ritter appeared in person, attended by counsel, to answer to the articles,[202] as did Judge Louderback,[203] Judge Archbald,[204] and Mr. Justice Chase.[205] Judge Humphreys, however, did not appear either in person or by attorney to answer the articles,[206] and President Johnson did not appear, but was represented by counsel.[207]

Whether or not the respondent appears in person or by attorney "on the day so fixed therefor as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, that trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings." [208]

Posted Bond, as Required:

In one trial, namely that of William Blount, the respondent was required to post bond and enter into recognizance for his appearance to answer said impeachment. He personally appeared before the President pro tempore and the Senate of the United States, along with his sureties, two members of the House of Representatives, to post bond for his appearance.[209]

Resignation Does not Render Moot the Impeachment of the Respondent:

In the trail of William Belknap in 1876, Mr. Belknap resigned his office of Secretary of War and the question was raised

> . . . whether W. W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War, notwithstanding his resignation of said office; . . .[210]

The Senate resolved the issue by agreeing to the following resolution:

> *Resolved,* That, in the opinion of the Senate, William W. Belknap, the respondent, is amenable to trial by impeachment for acts done as Secretary of War notwithstanding his resignation of said office before he was impeached.[211]

In the case of Judge English, the respondent having retired from office, the managers, while maintaining their right to prosecute the charges, recommended that impeachment proceedings be discontinued. As a result, the Senate dismissed the charges against Judge English on December 13, 1926.[212]

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[202] March 12, 1936, 74-2, *Senate Journal*, p. 478.

[203] April 11, 1933, 73-1, *Senate Journal*, p. 309.

[204] July 19, 1912, 62-2, *Senate Journal*, p. 629.

[205] January 2, 1805, 8-2, *Senate Journal*, p. 514.

[206] Judge Humphreys, not appearing, the case was continued on motion of the managers to enable the production of testimony and the Senate directed publication of a proclamation for him to appear as follows:

> *Ordered*. That this high court of impeachment stand adjourned till the 26th day of June instant, at 12 o'clock, meridian, and as the said West H. Humphreys has failed to make his appearance to answer the said articles of impeachment, though duly summoned, it is further ordered that proclamation for his appearance on that day be made by publishing this order in the National Intelligencer, National Republican and Evening Star newspapers, printed in the city of Washington, for at least ten days sucessively before said 26th day of June, instant; and also in the Nashville Union, a newspaper printed in the city of Nashville, in the State of Tennessee, at least five several days before said 26th day of June, instant, June 9, 1862, 37-2, *Journal*, p. 894.

[207] March 13, 1868, 40-2, *Senate Journal*, p. 824.

[208] Rule VIII, Senate Impeachment Rules.

[209] July 7, 1797, 5.1, *Senate Journal*, p. 389.

[210] May 4, 1876, 44-1, *Senate Journal*, p. 928.

[211] May 29, 1876, 44-1, *Senate Journal*, p. 944.

Witness at own Trial, Examined and Cross-examined:

During the trial of Halsted L. Ritter, the respondent, Judge Ritter, was directly examined and then read a statement in his own defense. Following the statement, he was subject to cross-examination on the part of Senators, submitting their questions in writing, and on the part of the managers of the House of Representatives.[213]

Also, in the trial of Judge Louderback in 1933, the respondent appeared and testified at length in his own behalf, and following his testimony, questions were propounded in writing and answered by the respondent.[214]

The first instance of a respondent taking the stand on his own behalf was Judge Robert Archbald in 1913.[215]

Witnesses Questioned by:

The respondent, James Peck, acted in his own defense, giving evidence and questioning witnesses.[216]

Secretary of the Senate

Informing the House:

Rule I of the impeachment rules provides that the Secretary of the Senate inform the House of Representatives of the Senate's readiness to receive the managers on the part of the House as follows:

> Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person and are directed to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to such notice.

On the day appointed for the trial, the Secretary also notifies the House of Representatives as follows:

> At 12:30 o'clock afternoon, or at such other hour as the Senate may order, of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of ——— ———, in the Senate Chamber.[217]

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[212] December 13, 1926, 60-2, *Record*, p. 344; December 13, 1926, 69-2, *Senate Journal*, p. 287.
[213] April 11, 1936, 74-2, *Record*, pp. 5370-84.
[214] May 23, 1933, 73-1, *Record*, pp. 3971-3991.
[215] January 6, 1913, 62-3, *Senate Journal*, p. 324.
[216] January 11, 1831, 21-2, *Senate Journal*, p. 333.
[217] Rule XII, Senate Rules of Impeachment.

Issues Orders, Mandates, etc.:

When the Presiding Officer, who has the power to make and issue orders, mandates, writs, and precepts, makes use of this power, he has the option of utilizing the Secretary of the Senate as follows:

> The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.[218]

Oaths, Administration of:

When a summons is returned against the person impeached, the Secretary of the Senate administers an oath to the returning officer:

> I, ——— ———, do solemnly swear that the return made by me upon the process issued on the ——— day of ———, by the Senate of the United States, against ——— ———, is truly made, and that I have performed such service as therein described: So help me God.[219]

When witnesses are called, they are administered the following oath by the Secretary or any other duly authorized person as follows:

> You, ——— ———, do swear (or affirm, as the case may be) that the evidence you shall give in the case now pending between the United States and ——— ———, shall be the truth, the whole truth, and nothing but the truth: So help you God.[220]

Reading of Motions:

Rule XVI provides for the reading of motions at the Secretary's table as follows:

> All motions, objections, requests, or applications whether relating to the procedure of the Senate or relating immediately to the trial (including questions with respect to admission of evidence or other questions arising during the trial) made by the parties or their counsel shall be addressed to the Presiding Officer only, and if he, or any Senator, shall require it, they shall be committed to writing, and read at the Secretary's table.

Record of Proceedings:

The Secretary is charged with keeping the record of proceedings as follows:

> The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.[221]

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[218] Rule V, Senate Rules of Impeachment.
[219] Rule IX, Senate Rules of Impeachment.
[220] Rule XXV, Senate Rules of Impeachment.
[221] Rule XIV, Senate Rules of Impeachment.

Subpenas, Ordering and Serving:

Rule XXV provides for the following form of direction for the serving of a subpena to be filed by the Secretary of the Senate as follows:

> The Senate of the United States to ——— ———, greeting:
>
> You are hereby commanded to serve and return the within subpena according to law.
>
> Dated at Washington, this ——— day of ———, in the year of our Lord ———, and of the Independence of the United States the ———.
>
> ——— ———,
> *Secretary of the Senate.*

Senate Rules

Senate Legislative Rules Applicable When Impeachment Rules Are Silent:

On April 11, 1868, during the trial of President Johnson, objection was heard to a motion from the floor by a Senator and the Chief Justice ruled that objection forced a motion to lie over one day. At this point the following colloquy occurred:

> Mr. TRUMBULL. An objection does not carry it over, does it?
>
> The CHIEF JUSTICE. The Chair thinks it does.
>
> Mr. TRUMBULL. It does not change the rule. The rule provides for this very thing being done, if the Senate choose to allow it.
>
> Mr. CONKLING. Mr. President, may I inquire under what rule of the Senate thus organized it is that this motion lies over upon the objection of a single Senator?
>
> The CHIEF JUSTICE. The Chief Justice in conducting the business of the court adopts for his general guidance the rules of the Senate sitting in legislative session as far as they are applicable. That is the ground of his decision.[222]

Likewise, a few days later, an order was sent to the Chair and objection was heard to its immediate consideration. The Chief Justice stated:

> Objection is made. The order will lie over for one day.
>
> Mr. SUMNER. I beg leave most respectfully to inquire under what rule such an objection can be made.
>
> The CHIEF JUSTICE. The Chief Justice stated on Saturday that in conducting the business of the court he applied, as far as they were applicable, the general rules of the Senate. This has been done upon several occasions, and when objection has been made orders have been laid over to the next day for consideration.[223]

Supplementary Rules:

In the trial of Halsted L. Ritter in 1936, the Senate adopted certain supplementary rules on impeachment only applicable during said trial which were as follows:

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[222] April 11, 1868, 40-2, *Congressional Globe Supplement*, p. 147.

[223] April 14, 1868, 40-2, *Congressional Globe Supplement*, p. 147.

> 1. In all matters relating to the procedure of the Senate, whether as to form or otherwise, the managers on the part of the House or the counsel representing the respondent may submit a request or application orally to the Presiding Officer, or, if required by him or requested by any Senator, shall submit the same in writing.
>
> 2. In all matters relating immediately to the trial, such as the admission, rejection, or striking out of evidence, or other questions usually arising in the trial of causes in courts of justice, if the managers on the part of the House or counsel representing the respondent desire to make any application, request, or objection, the same shall be addressed directly to the Presiding Officer and not otherwise.
>
> 3. It shall not be in order for any Senator, except as provided in the rules of procedure and practice in the Senate when sitting on impeachment trials, to engage in colloquy or to address questions either to the managers on the part of the House or to counsel for the respondent, nor shall it be in order for Senators to address each other; but they shall address their remarks directly to the Presiding Officer and not otherwise.
>
> 4. The parties may, by stipulation in writing filed with the Secretary of the Senate and by him laid before the Senate or presented at the trial, agree upon any facts involved in the trial; and such stipulation shall be received by the Senate for all intents and purposes as though the facts therein agreed upon had been established by legal evidence adduced at the trial.
>
> 5. The parties or their counsel may interpose objection to witnesses answering questions propounded at the request of any Senator, and the merits of any such objection may be argued by the parties or their counsel; and the Presiding Officer may rule on any such objection, which ruling shall stand as the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be without debate and without a division, unless the ayes and nays be demanded by one-fifth of the Members present, when the same shall be taken.[224]

During the trial of Judge Swayne in 1905, the Senate adopted the following supplementary rule applicable only during that trial:

> *Ordered,* That in all matters relating to the procedure of the Senate sitting in the trial of the impeachment of Charles Swayne, judge of the district court of the United States in and for the northern district of Florida, whether as to form or otherwise the managers on the part of the House or the counsel representing the respondent may submit a request or application orally to the Presiding Officer, or, if required by him or requested by any Senator, shall submit the same in writing.

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[224] March 12, 1936, 74-2, *Senate Journal,* p. 479.

In all matters relating immediately to the trial, such as the admission, rejection or striking out of evidence, or other questions usually arising in the trial of causes in courts of justice, if the managers or counsel for the respondent desire to make any application, request, or objection, the same shall be addressed directly to the Presiding Officer and not otherwise.

It shall not be in order for any Senator to engage in colloquy, or to address questions either to the managers on the part of the House or the counsel for the respondent, nor shall it be in order for Senators to address each other, but they shall address their remarks directly to the Presiding Officer.[225]

During the trial of Harold Louderback in 1933, the following supplementary rules were reported and adopted:

Ordered, That in addition to the rules of procedure and practice in the Senate when sitting on impeachment trials, heretofore adopted, and supplementary to such rules, the following rules shall be applicable in the trial of the impeachment of Harold Louderback, United States judge for the northern district of California:

First. In all matters relating to the procedure of the Senate, whether as to form or otherwise, the managers on the part of the House or the counsel representing the respondent may submit a request or application orally to the Presiding Officer, or, if required by him or requested by any Senator, shall submit the same in writing.

Second. In all matters relating immediately to the trial, such as the admission, rejection, or striking out of evidence, or other questions usually arising in the trial of causes in courts of justice, if the managers on the part of the House or counsel representing the respondent desire to make any application, request, or objection, the same shall be addressed directly to the Presiding Officer and not otherwise.

Third. It shall not be in order for any Senator, except as provided in the rules of procedure and practice in the Senate when sitting on impeachment trials, to engage in colloquy or to address questions either to the managers on the part of the House or to counsel for the respondent, nor shall it be in order for Senators to address each other; but they shall address their remarks directly to the Presiding Officer and not otherwise.

Fourth. The parties may, by stipulation in writing filed with the Secretary of the Senate and by him laid before the Senate or presented at the trial, agree upon any facts involved in the trial; and such stipulation shall be received by the Senate for all intents and purposes as though the facts therein agreed upon had been established by legal evidence adduced at the trial.

Fifth. The parties or their counsel may interpose objection to witnesses answering questions propounded at the request of any Senator, and the merits of any such objection may be argued by the parties or their counsel; and the Presiding Officer may rule on any such objection, which ruling shall stand as

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[225] February 3, 1905, 58-3, *Record,* p. 1819.

> the judgment of the Senate, unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be without debate and without a division, unless the yeas and nays be demanded by one-fifth of the Members present, when the same shall be taken.[226]

In the trial of Judge Archbald in 1912, no new rules were adopted; the rules framed in former trials were considered as being operative. This was the same procedure as had been followed in the trials of Secretary of War Belknap and Judge Swayne.[227]

Senators

Disqualification of, in Trials Failed:

There have been two trials in which attempts were made to disqualify certain Senators, and in both instances the Senators involved were permitted to vote.

In the trial of Judge Pickering, three Senators, Samual Smith, Israel Smith, and John Smith, who had been Members of the House of Representatives, and who had voted on the question of impeaching Judge Pickering, were members of the Senate during the trial. A resolution was introduced to provide that any Senator of the United States, having previously acted and voted, as a Member of the House on the question of impeachment, be disqualified, but this resolution was simply ordered to lie over for consideration, and all three Senators voted during the trial of Judge Pickering.[228]

During the trial of President Andrew Johnson, the issue of disqualification arose prior to the administration of the oath to Senator Benjamin Wade of Ohio. The arugment was raised by Senator Thomas Hendricks of Indiana that since Senator Wade had an interest in the outcome of the trial, inasmuch as he would succeed to the office of President if conviction had been obtained, that he was not competent to sit as a member of the court, Senator Oliver Morton of Indiana pointed out that under the Constitution the Senate has the sole power to try all impeachments and that Senator Wade, as a member of the Senate, had a constitutional right to sit there. After thorough discussion of the issue, Senator Hendricks withdrew his objection, stating that he thought that the question might more properly be raised when the Senate would be fully organized for a trial and when the accused party was present; the oath was administered to Senator Wade.[229]

Excused from Participation in Trial or from Voting:

Senators from time to time have asked to be excused from participation in an impeachment trial. During the trial of Halsted L. Ritter, the Senator from Colorado (Mr. Costigan) asked unanimous consent to stand aside from participation in the trial, with a statement of his reasons therefor entered in the *Record;* it was granted.[230]

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[226] April 11, 1933. 73-1, *Senate Journal*, p. 318.
[227] July15, 1912, 62-2, *Senate Journal*, p. 454.
[228] January 4, 1804, S-1, *Senate Journal*, pp. 382-83.
[229] March 5, 6, 1868, 40-2, *Senate Journal*, pp. 809-11.

Also in the trial of Judge Louderback in 1933, Senator John Overton of Louisiana and Senator Augustine Lonergan of Connecticut, who had been Members of the House of Representatives at the time of the impeachment of Judge Louderback, were excused from participation in the trial.[231] In the trial of Secretary of War Belknap in 1876, Senator James Alcorn from Mississippi took the oath and was sworn for the impeachment trial, but because he had been absent from the sessions of the Senate prior to an incidental question being voted on, was excused from voting at his request.[232]

In the trial of Judge Charles Swayne in 1905, just before the vote was to be taken on the first article of impeachment, Senator P. C. Knox of Pennsylvania asked to be excused from voting as a result of his absence on account of illness. The Presiding Officer put the question and the Senator was excused.[233]

During the trial of Halsted Ritter in 1936, Senator Millard Tydings of Maryland, for reasons assigned by him and by unanimous consent, was excused from participation in the trial.[234]

Just prior to voting on the articles of impeachment in the trial of Judge Louderback in 1933, a number of Senators were excused from voting. Senator Carter Glass of Virginia asked that he be excused because of repeated absences, which request was granted by unanimous consent.[235]

A total of twenty-one requests by Senators to be excused from voting were granted during votes on the articles involving Judge Louderback.[236] Two Senators had their positions announced as to whether they would vote "guilty" or "not guilty" in spite of their absence,[237] but no pairs were allowed on these final votes.[238]

During the trial of Judge Peck, Senator Thomas Hart Benton of Missouri was twice excused from voting, once at the beginning of the trial,[239] and again at the end of the trial subsequent to his being a witness in that trial.[240] In the same trial Senator John Robinson of Illinois was excused just prior to the final vote on the article of impeachment.[241]

Witnesses at Trial:

When a Senator is called as a witness, he is sworn and testifies standing in his place.[242]

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[230] March 12, 1936, 74-2, *Record*, p. 3646.
[231] March 9, 1933, 73-1, *Senate Journal*, p. 307.
[232] March 15, 1876, 44-1, *Senate Journal*, p. 933.
[233] February 27, 1905, 58-3, *Record*, p. 3468.
[234] March 31, 1936, 74-2, *Senate Journal*, p. 480.
[235] May 24, 1933, 73-1, *Record*, p. 4082.
[236] May 24, 1933, 73-1, *Record*, pp. 4082-87.
[237] May 24, 1933, 73-1, *Record*, p. 4082.
[238] May 24, 1933, 73-1, *Record*, p. 4083.
[239] April 26, 1830, 21-2, *Senate Journal*, p. 238.
[240] January 31, 1831, 21-2, *Senate Journal*, p. 341.
[241] January 31, 1831, 21-2, *Senate Journal*, p. 341.
[242] Rule XVIII, Senate Rules of Impeachment.

Witnesses, Questioned by Senators:

See also "Putting the question . . ." under Presiding officer, p. 66.

Objecting may be raised to questioning by Senators, but in the trial of Andrew Johnson in 1868, the Chief Justice ruled that any objection to the putting of a question by a member of the Senate must come from another Senator.[243]

In the trial of Judge Swayne in 1905, this ruling of the Chief Justice was effectively circumvented when the Presiding Officer agreed that Senators' questions could not be objected to by either managers or counsel, but the answer by the witness to such questions could be objected to.[244]

Rule XIX governing the question put by Senators reads as follows:

> "If a Senator wishes a question to be put to a witness, or to a manager, or to counsel of the person impeached, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer. The parties or their counsel may interpose objections to witnesses answering questions propounded at the request of any Senator and the merits of any such objection may be argued by the parties or their counsel. Ruling on any such objection shall be made as provided in Rule VII. It shall not be in order for any Senator to engage in colloquy." [245]

Subpenas

Enforcement of:

In the trial of Secretary of War Belknap in 1876, a witness attempted to withhold certain evidence which he claimed was "privileged communications." The President pro tempore submitted the question to the Senate as to whether the witness should produce the evidence and it was decided in the affirmative.[246]

The Senate discussed on an earlier occasion how the Sergeant at Arms might enforce its subpena. In 1868 during the trial of Andrew Johnson, there was a discussion of the power of the Sergeant at Arms to summon a posse comitatus [247] and finally the following wording was adopted regarding the powers of the Sergeant at Arms:

> . . . And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.[248]

Form of:

For the form of subpenas, see Rule XXV for Impeachment Trials.

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[243] April 13, 1968, 40-2, *Congressional Globe Supplement*, p. 166.

[244] February 11, 1905, 58-3, *Record*, pp. 2393, 2397, 2399.

[245] August 16, 1986 *Congressional Record* (for August 15, 1986) pp. S11902-S11903

[246] July 8, 1876. 44-1, vol. 4, part 7, *Record*, p. 216.

[247] March 2, 1868, 40-2, *Congressional Globe*, pp. 1526-33.

[248] Rule VI, Senate Rules of Impeachment.

Signed by Presiding Officer:

Under a rule of the Senate subpenas or other writs are signed by the Presiding Officer, be he the Vice President or President pro tempore, during session of the Senate for the trial or while on vacation.

On August 3, 1912, during the trial of Judge Robert W. Archbald, Senator Stone, of Missouri, propounded the following inquiry:

> Mr. President, I should like to propound an inquiry. The Presiding Officer, in other words, the Senator who shall preside, I presume is to attach his signature to the subpenas for witnesses. Is that correct?

On response, the President pro tempore directed the Secretary to read the following rule of the Senate:

> V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules, or by the Senate and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

Mr. Stone then inquired:

> Then under the rule the Vice President will be the Presiding Officer who would sign all writs?
>
> Would the present occupant of the chair be clothed with that power during the vacation? Application for the issue of subpenas for witnesses will be made during the vacation of the Senate, in all probability; probably in November. It puzzles me a little bit to know who would sign those writs.

The President pro tempore said:

> The Chair does not think there is any trouble at all about it. Whoever is the presiding officer at the time the writ is required would, in the opinion of the present occupant of the chair, be clothed with that power. The Vice President, of course, will be during the vacation the presiding officer of the Senate, and if the Senate should indicate anyone else to be President pro tempore during that time, the power would be exercised in the first instance by the Vice President, or, if he should be under disability, by the President pro tempore, whoever he might be.[249]

Summons

For form of, see pages 28–30.

Table, Motion to

On April 13, 1868, during the impeachment trial of President Andrew Johnson, while an order relating to the final argument in the trial was under consideration, the Chief Justice admitted a motion to lay a pending proposition on the table.

Note the following:

Senator Williams of Oregon, moved that the resolution lie on the table.

Senator Drake, of Missiouri, said:

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[249] August 3, 1912, 66–2, *Record*, p. 10140.

> I raise a question of order, Mr. President, that in this Senate sitting for the trial of an impeachment there is no authority for moving to lay any proposition on the table. We must come to a direct vote, I think, one way or the other.

The Chief Justice (Salmon P. Chase) said:

> The Chief Justice cannot undertake to limit the Senate in respect to its mode of disposing of a question; and as the Senator from Oregon (Mr. Williams) announced his purpose to test the sense of the Senate in regard to whether they will alter the rule at all the Chief Justice conceives his motion to be in order.[250]

Testimony Not Limited to a Single Article

On February 11, 1805, during the trial of Mr. Justice Samuel Chase, an associate justice of the Supreme Court, a challenge was raised against a witness based on the testimony which applied to articles to be considered subsequently. It was the sense of the Senate that witnesses should be allowed to support more than one article with their testimony.[251]

Vote

Reconsider Not in Order:

With the adoption by the Senate of S. Res. 479, 99th Cong., 2d. Sess., on August 16, 1986, a new sentence was added at the end of Rule XXIII providing that "A motion to reconsider the vote by which any article of impeachment is sustained or rejected shall not be in order." The report accompanying S. Res. 479 (Senate Report 99-401) states: "The purpose of this restriction is to obviate the confusion that would invariably attend a reversal of a vote to convict when, according to most authorities, such a vote operates automatically and instantaneously to separate the person impeached from the office. Under ordinary circumstances the Senate has two days for reconsideration. Since the trial rules are silent with respect to a motion to reconsider, the rules of Senate applicable to legislative matters would apply. Consequently, the effect of this change is to preclude the operation of the normal rule in the context of a vote on the final question, whether such vote is to convict or to acquit."

Two-Thirds to Convict:

Rule XXIII in part provides that "if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered;" . . .

Vote Required: Majority Only, Except for Conviction:

During the trial of William Belknap in 1876, a question arose concerning the admission of evidence and Senator Allen Thurman of Ohio suggested that the two-thirds requirement for conviction should apply to objections to testimony. The proposal was not sustained.[252]

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[250] April 13, 1868, 40-2, *Globe Supplement*, p. 162.

[251] February 11, 1805, 8-2, *Annals of the Congress of the United States*, p. 193.

Use of Standing Rules:

Senate Resolution 479, 99th Congress, 2d Session, adopted August 16, 1986, changed Rule VII by deletion of the last sentence which effectively required the Senate to arrive at its decisions by voice vote unless the yeas and nays were demanded. The new language allows the Senate to vote its decisions "in accordance with the Standing Rules of the Senate," that is, by voice vote or by a division, or, when requested by one-fifth of the members present, by the yeas and nays.

Yeas and Nays: Rule XX:

Rule XX, which requires the doors of the Senate to be open upon trial of an impeachment unless ordered to be closed for purposes of deliberating any order or decision as provided in Impeachment Rule XXIV, was amended by S. Res. 479, 99th Cong., 2d Session by adding the following new sentence:

> A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record.

Yeas and Nays: Rule XXIII:

Rule XXIII provides, in part, "on the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article separately;" . . .

Yeas and Nays: Rule XXIV:

Rule XXIV, which deals with voting on orders and decisions and the procedure for going behind closed doors in order to deliberate these and other matters, was amended by S. Res. 479, 99th Cong. 2d Session, to incorporate the unanimous-consent procedure added to Rule XX. Since many orders and decisions are believed to involve noncontroversial matters, it was the Committee's and the Senate's belief that they may be dispensed with without objections. However, in the event of objection, the yeas and nays may be had. Under the previous rule "All orders and decision shall be made and had by yeas and nays." In place of this language the Senate substitute "All orders and decisions may be acted upon without objection, or if objection is heard, the orders and decisions shall be voted on without debate 'by yeas and nays' ".

Yeas and Nays: (Cross References)

See also "Debate," pages 47–49.

See also under "Orders and Decisions."

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[252] July 21, 1876, 44-1, *Record,* Vol. 4, Part 7, p. 315.

Witnesses

Attendance:

The Senate has adjourned on occasion to await the attendance of witnesses.[253] The Senate compels the attendance of witnesses[254] and forces obedience to its orders.[255] It can order witnesses to produce papers.[256]

Examination of:

When witnesses are summoned, they are examined first by one person on behalf of the party producing them and then by one person from the other side.[257]

The order in which witnesses are examined can be waived with the consent of both parties.[258]

Limitation on Number:

During the trial of Judge Archbald, the Senate adopted the following order:

> Ordered, That the number of character witnesses shall be limited to 15.[259]

On December 4, 1912,[260] following the reading and approval of the Journal, the names of witnesses on behalf of the managers were read to ascertain their presence, and the introduction of testimony on behalf of the managers began.

This presentation of testimony continued on December 5, 6, 7, 9, 10, 11, 12, and was concluded on December 14, when Mr. Manager Clayton announced that the examination in the main part had been concluded.

The introduction of testimony on behalf of the respondent was begun on December 16 and continued until December 19, when adjournment was taken until January 3, 1913.

On December 17, 1912, following the introduction of a number of witnesses called by counsel on behalf of the respondent to testify as to respondent's character, Mr. Manager Clayton said:

> Mr. President, the managers have offered no character witnesses anywhere in these proceedings; it is not their purpose to offer any character witnesses. Ten character witnesses have been examined. The rule adopted, or the practice I may say, to be more accurate, in all the courts of justice so far as I know is that the court has the discretionary power to limit the number of witnesses as to character. I take it that that power is an inseparable incident of the court to regulate its proceedings and for the purpose, among others, of bringing the trial to an end.
>
> In so far as I know, all courts permit a reasonable number of witnesses to be examined on character; but where the testimo-

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[253] July 13, 1876, 44–1, *Senate Journal*, pp. 978–80.

[254] Rule VI in part states: "The Senate shall have the power to compel the attendance of witnesses, . . .".

[255] Rule VI in part states: "The Senate shall have power to . . . enforce obedience to its orders, . . .".

[256] July 8, 1876, 44–1, *Senate Journal*, p. 966.

[257] Rule XVII, Senate Rules of Impeachment.

[258] February 16, 1905, 58–3, *Record*, pp. 2719–20.

[259] December 17, 1912, 62–3, *Senate Journal*, p. 322.

[260] December 4, 1912, 62–3 *Record*, p. 98.

ny of the character of the party is not controverted, the court has always, after a reasonable number of witnesses have been examined, held that no more should be examined on that particular matter. Some of the courts of the Union hold that four character witnesses are sufficient where the testimony of those witnesses is not controverted.

So, Mr. President, I respectfully submit to you and to the Senate that after these gentlemen have examined 10 witnesses on character and when the testimony of those character witnesses is not disputed—is not controverted—and when the managers tell the Senate it will not be controverted, it seems to me that the further examination of character witnesses might well be dispensed with.

The Presiding Officer said:

The Chair recognizes, of course, that the practice is such as the manager has indicated, and the necessity of it is apparent. Otherwise the time of a court might be indefinitely taken up through the introduction of innumerable witnesses. At the same time the Chair recognized that in this case the character of the respondent is necessarily in issue, and on account of the gravity of the case and the peculiar position which the Presiding Officer holds, simply as the mouthpiece of the Senate, the Chair does not feel authorized to take the responsibility of shutting off the respondent in the proof which he seeks to make upon this line. The Senate has full control over the matter whenever it sees proper to exercise it.

Thereupon, on motion of Senator Reed, of Missouri, it was—

Ordered, That the number of character witnesses shall be limited to 15.[261]

Limited Examination of:

On December 18, 1912,[262] on cross-examination, Mr. Manager Webb proposed to interrogate Miss Mary F. Boland, a witness called in behalf of the respondent, about certain matters relative to a conversation which has not been referred to in the main examination. Objection by counsel for the respondent was sustained by the presiding officer.

The Presiding Officer. The rule is plain that the counsel can only cross-examine the witness about matters upon which the witness has been interrogated on direct examination.

Whereupon, on motion of Mr. James R. Reed, of Missouri, it was—

Ordered, That the witness now on the stand, Miss Mary F. Boland, be at this time interrogated by the managers relative to that part of the conversation sought to be elicited.

List to be Called:

During the trial of William W. Belknap in 1876, the counsel for the respondent moved that the managers on the part of the House furnish a list of the witnesses that they intend to call.

Whereupon the Senate agreed to the following order:

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[261] December 17, 1912, 62-3, *Record,* p. 774, *Senate Journal,* p. 322.

[262] December 18, 1912, 62-3, *Record,* p. 841, *Senate Journal,* p. 322.

> *Resolved,* That the managers furnish to the defendant, or his counsel, within four days, a list of witnesses, as far as at present known to them, that they intend to call in this case; and that, within four days thereafter, the respondent furnish to the managers a list of witnesses as far as known, that he intends to summon.[263]

Place Occupied While Testifying:

The Senate assigns the place to be occupied by witnesses while testifying in an impeachment trial.

On July 6, 1876,[264] during the impeachment trial of William W. Belknap, the testimony was about to begin when the President pro tempore (T. W. Ferry, of Michigan) suggested that witnesses take a place at the right of the Chair, on a level with the Secretary's desk; but at the suggestion of the managers and several Senators a place on the floor in front of the Secretary desk was assigned to the witnesses.

Later in the trial Senator Randolph, of New Jersey, said:

> Mr. President, is there any objection on the part of the Senate and counsel to have the witness stand at your right or left? So far as I am concerned, it is utterly impossible for me to hear one word out of three that is spoken. It has been so during the whole time. If I take the seat of another Senator, it is at his inconvenience. This is my seat. I have no right to another, but I have a right to hear what is said.

The President pro tempore said:

> The Chair will state to the Senator that he designated a little higher place for the witnesses, but the managers and counsel thought it would be preferable to have the witness in front of the desk, and the Chair submitted that to the Senate, and, as there was no objection, the witnesses were placed there.[265]

The President pro tempore then put the request to the Senate and it was ordered that the witnesses stand on the right of the Chair on a level with the Secretary's desk.

Stand While Testifying:

On Monday, April 6, 1936 (Legislative day of Monday, February 24, 1936), the following occurred:

> Mr. KING. Pursuant to the practice heretofore observed in impeachment cases, I send to the desk an order, and ask for its adoption.
>
> The VICE PRESIDENT. The order will be stated.

The legislative clerk read as follows:

> *Ordered,* That the witnesses shall stand while giving their testimony.
>
> The VICE PRESIDENT. Is there objection to the adoption of the order? The Chair hears none, and the order is entered.[266]

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[263] June 6, 1876, 44-1, *Senate Journal,* p. 951.
[264] July 6, 1876, 44-1, *Record* of trial, p. 179.
[265] July 6, 1876, 44-1, *Record* of trial, p. 182.
[266] April 6, 1936, 74-2, *Record,* p. 4971.

Subpena Disregarded, Witness Admonished:

A witness in the trial of Judge Robert Archbald in 1912 was subpenaed by the Senate but did not appear. Not the following:

> *Ordered,* That an attachment do issue in accordance with the rules of the Senate of the United States for one J. H. Rittenhouse, witness heretofore duly subpenaed in this proceeding on behalf of the managers of the House of Representatives.

Later on the same day Mr. Manager Clayton stated that the witness, James H. Rittenhouse, had appeared and was now in the corridor and asked that he be admonished to be present until discharged.

> The PRESIDENT PRO TEMPORE. The witness will be brought into the presence of the Senate.
>
> James H. Rittenhouse appeared in the Chamber.
>
> The PRESIDENT PRO TEMPORE. Mr. Witness, you are brought before the Senate to be admonished that you must scrupulously obey the orders you have received in the summons to appear here and not be absent yourself without leave of the Senate. You may now retire.[267]

Subpenas, Summoned at Public Expense:

In the trial of Secretary of War Belknap, the following order was adopted:

> Ordered, That the Secretary issue subpenas that may be applied for by the respondent for such witnesses, to be summoned at the expense of the United States, as shall be allowed by a committee, to consist of Senators Frelinghuysen, Thurman, and Christiancy; and that subpenas for all other witnesses for the respondent shall contain the statement that the witness therein named are to attend upon the tender on behalf of the respondent of their lawful fees.[268]

VI. SEQUENCE OF EVENTS AT THE CLOSE OF A TRIAL

1. FOLLOWING THE COMPLETION OF THE PRESENTATION OF WITNESSES AND DOCUMENTS, ORDERS WERE ADOPTED BY THE SENATE SETTING THE TIME FOR THE FINAL ARGUMENTS

This procedure has varied but the general outline can be seen below from the trials of Judge Halsted L. Ritter, Judge Harold Louderback, and President Andrew Johnson.

In the Johnson case, as many managers or counsel for the President as desired to do so were permitted to present final arguments, the only limitation being that the conclusion should be by one manager.

> *Ordered,* That as many of the managers and of the counsel for the President as desired to do so be permitted to file arguments or to address the Senate orally, but the conclusion of the oral argument shall be by one manager, as provided in the 21st rule. (Now Rule XXII.)

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[267] December 5, 1912, 62-3, *Senate Journal,* p. 318, *Record,* p. 152.

[268] June 17, 1876, 44-1, *Senate Journal,* p. 959.

> Mr. Manager Logan, under the authority of the foregoing order, filed a printed argument.[269]

In both the Louderback and Ritter cases, the final arguments were limited to 4 hours, equally divided between the managers and counsel with the time allocated as each side saw fit.

> *Ordered,* That the time for final argument of the case of Harold Louderback shall be limited to 4 hours, which said time shall be divided equally between the managers on the part of the House of Representatives and the counsel for the respondent, and the time thus assigned to each side shall be divided as each side for itself may determine.[270]

An order, identical in form, was adopted in the Ritter trial.[271]

2. AFTER THE COMPLETION OF FINAL ARGUMENTS, THE SENATE WENT INTO CLOSED SESSION FOR DELIBERATION OF THE QUESTION

In the Johnson and Louderback trials, the Senate went into closed session almost immediately after the conclusion of the final arguments, and in the Ritter case the Senate adjourned until the next day following the final arguments, and upon reconvening went into closed session. Note the following excerpt from the *Journal* in the Johnson trial:

> The Chief Justice stated that the argument in behalf of the House of Representatives and in behalf of the President having been closed, the business now in order was the motion submitted by Mr. Edmunds, on the 24th of April, that when the arguments shall have been concluded and the doors closed for deliberation upon the final question, the official reporters of the Senate shall take down the debate upon the final question, to be published in the proceedings.
>
> The Senate resumed the consideration of the said motion; and
>
> On the question to agree to the amendment proposed by Mr. Williams on the 27th of April,
>
> On motion by Mr. Anthony to amend the amendment by inserting at the end thereof the words *except by leave of the Senate, to be had without debate,*
>
> Pending the consideration of the motion,
>
> On motion by Mr. Trumbull,
>
> *Ordered,* That the doors of the galleries be reopened.
>
> On motion by Mr. Wilson, at 3 o'clock p.m., the Senate took a recess for 15 minutes; at the expiration of which,
>
> On motion by Mr. Edmunds that the doors of the Senate be closed for deliberation,
>
> It was determined in the affirmative; and
>
> The doors having been closed,
>
> The Chief Justice stated the question before the Senate.[272]

In the case of the Louderback trial the *Journal* exhibits:

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[269] April 22, 1868, 40-2, *Senate Journal,* p. 921.

[270] May 23, 1933, 73-1, *Senate Journal,* p. 328.

[271] April 13, 1936, 74-2, *Senate Journal,* p. 505.

[272] May 6, 1868, 40-2, *Senate Journal,* p. 933.

> Mr. Sumners, on behalf of the managers on the part of the House of Representatives, delivered the closing argument in support of the articles of impeachment.
>
> On motion by Mr. Ashurst, at 3 o'clock and 7 minutes p.m., that the doors be closed for deliberation.
>
> It was determined in the affirmative.
>
> The Vice President thereupon ordered the Sergeant at Arms to clear the galleries and close the doors; and the order having been executed, and the managers on the part of the House of Representatives, and the respondent and his counsel, having retired from the Chamber.[273]

An excerpt from the *Journal* of the Ritter trial is set forth below:

> Mr. Sumners having subsequently concluded his argument,
>
> On motion by Mr. Robinson, at 1 o'clock and 56 minutes p.m.,
>
> The Senate, sitting for the impeachment trial aforesaid, took a recess, under its order of yesterday, until 12 o'clock m. tomorrow.

WEDNESDAY, APRIL 15, 1936

IMPEACHMENT OF HALSTED L. RITTER

The Senate, sitting for the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, resumed its session.

The respondent, Halsted L. Ritter, together with his counsel, appeared and they took the seats assigned to them.

The Sergeant at Arms made the usual proclamation.

On motion by Mr. Ashurst, and by unanimous consent, the Journal of the proceedings of yesterday was approved.

MESSAGE FROM THE HOUSE

> On motion by Mr. Robinson,
>
> The impeachment proceedings were temporarily suspended to permit the Senate, in its legislative capacity, to receive a message from the House of Representatives; after which

* * * * * * *

> The Senate, sitting for the impeachment trial aforesaid, resumed its session.
>
> Mr. Robinson raised a question as to the presence of a quorum;
>
> Whereupon
>
> The Vice President directed the roll to be called;

* * * * * * *

> A quorum being present,
>
> On motion by Mr. Ashurst, at 12 o'clock and 10 minutes p.m.,
>
> *Ordered,* That the doors of the Senate be closed for deliberation.

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[273] May 24, 1833, 73-1, *Senate Journal*, p. 338.

> The respondent and his counsel withdrew from the Chamber, and the doors having been closed,
>
> The Senate, sitting for the said trial, proceeded with its deliberations.[274]

3. EITHER DURING OR AFTER DELIBERATION BEHIND CLOSED DOORS IN THE TRIALS CITED BELOW, THE SENATE ADOPTED ORDERS SETTING A DATE AND TIME, AND THE METHOD, FOR VOTING ON THE ARTICLES OF IMPEACHMENT

In the Johnson trial several days were spent deliberating behind closed doors and eventually the Senate allowed the Chief Justice to determine the method of voting. Once in closed session a letter was read from the Speaker of the House asking that the House be notified when the doors of the Senate should be open. The Senate adopted the following order:

> *Ordered,* That the Secretary inform the House of Representatives that the Senate sitting for the trial of the President upon articles of impeachment will notify the House when it is ready to receive them again at its bar.[275]

The Senate then adjourned in closed session and upon reconvening the Chief Justice stated that the doors would again be closed unless there was some order to the contrary.[276]

During that day's closed session, and order was agreed to "that on Tuesday next following, at twelve o'clock m., the Senate shall proceed to vote without debate on the several articles of impeachment."

After several attempts had been made without success to prescribe the method of putting the question, the whole subject was ordered to lie upon the table.[277]

The Senate adjourned in closed session again without taking further action and as a result the Chief Justice sought to resolve the situation with the following statement:

> SENATORS: In conformity with what seemed to be the general wish of the Senate when it adjourned last Thursday, the Chief Justice in taking the vote on the articles of impeachment, will adopt the mode sanctioned by the practice in the cases of Chase, Peck, and Humphreys.
>
> He will direct the Secretary to read the several articles successively, and after the reading of each article will put the question of guilty or not guilty to each senator, rising in his place, in the form used in the case of Judge Chase:
>
> Mr. Senator ———, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor, as charged in this article?
>
> In putting the question on articles 4 and 6, each of which charges a crime, the word "crime" will be substituted for the word "misdemeanor."
>
> The Chief Justice has carefully considered the suggestion of the senator from Indiana (Mr. Hendricks), which appeared to

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[274] April 14, 1936, 74-2, *Senate Journal.* p. 505; April 15, 1936, 74-2, *Senate Journal,* p. 506.
[275] May 6, 1868, 40-2, *Senate Journal,* p. 933.
[276] May 7, 1868, 40-2, *Congressional Globe Supplement,* p. 408.
[277] May 7, 1868, 40-2, *Congressional Globe Supplement,* p. 409.

meet the approval of the Senate, that in taking the vote on the 11th article, the question should be put on each clause, and has found himself unable to divide the article as suggested. The article charges several facts, but they are so connected that they make but one allegation, and they are charged as constituting one misdemeanor.

The first fact charged is, in substance, that the President publicly declared in August, 1866, that the 39th Congress was a Congress of only part of the States and not a constitutional Congress, intending thereby to deny its constitutional competency to enact laws or propose amendments of the Constitution; and this charge seems to have been made as introductory, and as qualifying that which follows, namely, that the President in pursuance of this declaration attempted to prevent the execution of the tenure-of-office act by contriving and attempting to contrive means to prevent Mr. Stanton from resuming the functions of Secretary of War after the refusal of the Senate to concur in his suspension, and also by contriving and attempting to contrive means to prevent the execution of the appropriation act of March 2, 1867, and also to prevent the execution of the rebel States governments act of the same date.

The gravamen of the article seems to be that the President attempted to defeat the execution of the tenure-of-office act, and that he did this in pursuance of a declaration which was intended to deny the constitutional competency of Congress to enact laws or propose constitutional amendments, and by contriving means to prevent Mr. Stanton from resuming his office of Secretary, and also to prevent the execution of the appropriation act and the rebel States governments act.

The single substantive matter charged is the attempt to prevent the execution of the tenure-of-office act; and the other facts are alleged either as introductory and exhibiting this general purpose, or as showing the means contrived in furtherance of that attempt.

This single matter, connected with the other matters previously and subsequently alleged, is charged as the high misdemeanor of which the President is alleged to have been guility.

The general question, guilty or not guilty of a high misdemeanor as charged, seems fully to cover the whole charge, and will be put as to this article as well as to the others, unless the Senate direct some mode of division.

In the 10th article the division suggested by the senator from New York (Mr. Conkling) may be more easily made. It contains a general allegation to the effect that on the 18th of August, and on other days, the President, with intent to set aside the rightful authority of Congress and bring it into contempt, delivered certain scandalous harangues, and therein uttered loud threats and bitter menaces against Congress and the laws of the United States, enacted by Congress, thereby bringing the office of President into disgrace, to the great scandal of all good citizens, and sets forth, in three distinct specifications, the harangues, threats, and menaces complained of.

In respect to this article, if the Senate sees fit so to direct, the question of guilty or not guilty of the facts charged may be taken in respect to the several specifications, and then the question of guilty or not guilty of a high misdemeanor as charged in the article can also be taken.

The Chief Justice, however, sees no objection to putting the general question on this article in the same manner as on the others, for, whether particular questions be put on the specifications or not, the answer to the final question must be determined by the judgment of the Senate, whether or not the facts alleged in the specifications have been sufficiently proved, and whether, if sufficiently proved, they amount to a high misdemeanor within the meaning of the Constitution.

> On the whole, therefore, the Chief Justice thinks that the better practice will be to put the general question on each article without attempting to make any subdivision, and will pursue this course if no objection is made. He will, however, be pleased to conform to such directions as the Senate may see fit to give in this respect.
>
> Whereupon
>
> Mr. Sumner submitted the following order; which was considered by unanimous consent and agreed to:
>
> *Ordered*, That the questions be put as proposed by the presiding officer of the Senate, and each senator shall rise in his place and answer "guilty," or "not guilty," only.[278]

Proceeding further in closed session the order quoted below was adopted notifying the House that the Senate would receive them the next day:

> *Ordered*, That the Secretary be directed to inform the House of Representatives that the Senate, sitting for the trial of the President of the United States upon articles of impeachment, will be ready to receive the House of Representatives in the Senate chamber on Tuesday, the 12th of May, at 12 o'clock m.[279]

No further orders were adopted in closed session. The Senate convened the next day in open session, and due to the illness of a Senator, any vote on the articles of impeachment was postponed for four days. It was in open session that the following orders regarding the method of voting were adopted:

> *Ordered*, That the Chief Justice, in directing the Secretary to read the several articles of impeachment, shall direct him to read the 11th article first, and the question shall then be taken on that article, and thereafter on the other ten successively as they stand.
>
> The managers on the part of the House of Representatives, to wit: Mr. Bingham, Mr. Boutwell, Mr. James F. Wilson, Mr. Butler, Mr. Thomas Williams, Mr. Logan, and Mr. Thaddeus Stevens, entered the Senate chamber and took the seats assigned them.
>
> The Sergeant-at-arms announced the presence, at the door of the Senate chamber, of the House of Representatives; and
>
> The House of Representatives, as in Committee of the Whole House, preceded by its chairman, Mr. Ellihu B. Washburne,

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[278] May 11, 1868, 40-2, *Senate Journal*, pp. 939-940.
[279] May 11, 1868, 40-2, *Senate Journal*, p. 940.

> and accompanied by its Speaker and Clerk, entered the Senate chamber and took the seats provided for them.
>
> Mr. Stanbery, Mr. Evarts, Mr. Nelson, and Mr. Groesbeck, of counsel for the President, appeared at the bar of the Senate and took the seats assigned them.
>
> Mr. Edmunds submitted the following motion; which was considered, by unanimous consent, and agreed to:
>
> *Ordered,* That the Senate now proceed to vote upon the articles according to the rules of the Senate.[280]

In the Louderback trial there is no record of any order being adopted in closed session, but immediately upon returning to open session, the following order concerning the method of voting was adopted:

> *Ordered,* That upon the final vote in the pending impeachment of Harold Louderback, the Secretary shall read the articles of impeachment separately and successively, and when the reading of each article shall have been concluded the Presiding Officer shall state the question thereon as follows:
>
> Senators, how say you? Is the respondent, Harold Louderback, guilty or not guilty as charged in this article?
>
> Thereupon the roll of the Senate shall be called, and each Senator, as his name is called, unless excused, shall arise in his place and answer "Guilty" or "Not guilty." [281]

In the Ritter trial two orders were adopted, the first in closed session and the second immediately upon resuming open session:

> *Ordered,* That when the Senate, sitting as a court, concludes its session on today it take a recess until 12 o'clock m. tomorrow, and that upon the convening of the court on Friday it proceed to vote upon the various articles of impeachment.
>
> *Ordered,* That upon the final vote in the pending impeachment of Halsted L. Ritter, the Secretary shall read the articles of impeachment separately and successively, and when the reading of each article shall have been concluded the Presiding Officer shall state the question thereon as follows:
>
> "Senators, how say you? Is the respondent, Halsted L. Ritter guilty or not guilty?"
>
> Thereupon the roll of the Senate shall be called, and each Senator as his name is called, unless excused, shall arise in his place and answer "guilty" or "not guilty." [282]

In adopting S. Res. 479, 99th Congress, 2d Session, the Senate added a new paragraph to Rule XXIII whose heading reads "Form of putting the question on each article of impeachment." This addition largely formalizes the fairly simple practice in putting the final question in the two most recent impeachment trials, the Louderback and Ritter impeachment trials. It provides that "The Presiding Officer shall first state the question: thereafter each Senator, as his name is called, shall rise in his place and answer: guilty or not guilty." This contrasts with the more cumbersome and time consuming procedure used at an earlier time, such as during the Johnson trial, when the Chief Justice directed the Secretary of the Senate to call the names of the Senators, and as each rose in his place, the question was repeated anew to him as well as soliciting his position thereon. (Senate Report 99-401: 99th Congress, 2d Session.)

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[280] May 16, 1868, 40-2, *Senate Journal,* p. 942.
[281] May 24, 1933, 73-1, *Senate Journal,* p. 339.
[282] April 16, 1936, 74-2, *Senate Journal,* p. 506.

4. PROVISION WAS ALSO MADE FOR THE FILING OF OPINIONS FOLLOWING THE VOTES BY INDIVIDUAL SENATORS

In the Johnson and Louderback cases, the Senators were given two days to file written opinions to be published with the *Record* of proceedings, as follows:

> *Ordered,* That when the Senate adjourns to-day it adjourn to meet on Monday next, at 11 o'clock a.m., for the purpose of deliberation under the rules of the Senate sitting on the trial of impeachment, and that on Tuesday next following, at 12 o'clock m., the Senate shall proceed to vote, without debate, on the several articles of impeachment, and each senator shall be permitted to file, within two days after the vote shall have been so taken, his written opinion to be printed with the proceedings.[283]

* * * * * * *

> *Ordered,* That upon the final vote in the pending impeachment of Harold Louderback, each Senator may, within 2 days after the final vote, file his opinion in writing to be pubished in the printed proceedings in the case.[284]

In the Ritter trail, four days were allowed.

> *Ordered,* That upon the final vote in the pending impeachment of Halsted L. Ritter each Senator may, within 4 days after the final vote, file his opinion in writing, to be published in the printed proceedings in the case.[285]

5. AT THE ARRIVAL OF THE TIME SET BY PREVIOUS ORDER, THE SECRETARY READ THE FIRST ARTICLE OF IMPEACHMENT TO BE VOTED ON, FOLLOWED BY THE CLERK CALLING THE ROLL

In the Johnson trail, as each Senators' name was called, he rose in his place and the Chief Justice propounded the question whether or not the President was guilty as charged.

> The Chief Justice directed the Secretary to call the names of the senators.
>
> Each senator, as his name was called, rose in his place and the Chief Justice proposed to him the following question:
>
> > Mr. Senator———, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty, or not guilty, of high misdemeanor, as charged in this article of impeachment? [286]

In the Louderback and Ritter cases, however, the Presiding Officer simply stated the question before the roll was called, at which point each Senator rose in his place and answered "guilty" or "not guilty." [287]

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[283] May 7, 1868, 40-2, *Senate Journal,* pp. 936-37.

[284] May 24, 1933, 73-1, *Senate Journal,* p. 339.

[285] April 16, 1936, 74-2. *Senate Journal,* p. 506.

[286] May 16, 1868, 40-2, *Senate Journal,* p. 943.

During the trial of Judge Ritter, the Majority Leader, Senator Joseph T. Robinson, of Arkansas, announced that on these votes pairs would neither be arranged or recognized, but the Presiding Officer stated that a Senator could ask to be excused from voting on any article.

In the trial of Secretary of War Belknap in 1876, an order was adopted to allow each Senator when his name was called to vote on each article of impeachment, and to state his reasons for his vote, with a time limit of one minute on such reasons. This provision was taken advantage of as numerous Senators not only voted on the articles of impeachment, but also explained their votes as they did so.[288]

Rule XXIII, which deals generally with voting the final question, was amended in several important ways by the adoption of S. Res. 479, 99th Congress, 2d Session, on August 16, 1986. A pair of new restrictions were added at the beginning of the rule. These read as follows:

> An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial. Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment unless the Senate adjourns for a period not to exceed one day or adjourns sine die.

The portion of the amendment effectively enjoining the division of an individual article into separate specifications is proposed to permit the most judicious and efficacious handling of the final question both as a general matter and, in particular, with respect to the form of the articles that proposed the impeachment of President Richard M. Nixon.

The provision requiring the Senate to dispose of the final question once it has commenced voting the articles of impeachment or, alternatively, either adjourn for 24 hours or without day, is intended to prevent a recurrence of the incident during the President Andrew Johnson trial when the Senate having failed to convict on the first article to be voted (No. 11) proceeded to adjourn for fourteen days before considering the other articles. (Senate Report 99-401: 99th Congress, 2d Session.)

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[287] May 24, 1933, 73-1, *Senate Journal,* p. 339; April 17, 1936, 74-2, *Senate Journal,* p. 507.

[288] July 31, 1876, 44-1 *Senate Journal,* p. 990.

6. FOLLOWING THE VOTE ON EACH ARTICLE, THE PRESIDING OFFICER PRONOUNCES THE DECISION. ONCE THE JUDGMENT OF THE SENATE HAS BEEN PRONOUNCED ON THE ARTICLES OF IMPEACHMENT, THE TRIAL MIGHT PROGRESS IN TWO WAYS. IF THE RESPONDENT WAS FOUND NOT GUILTY ON ALL CHARGES, THE VERDICT OF ACQUITTAL WAS ANNOUNCED AND THE SENATE SITTING AS A COURT OF IMPEACHMENT ADJOURNED SINE DIE. IF THE RESPONDENT WAS FOUND GUILTY OF ANY OF THE CHARGES, THE JUDGMENT OF REMOVAL AND POSSIBLE DISQUALIFICATION FROM EVER HOLDING AN OFFICE OF TRUST OR PROFIT UNDER THE UNITED STATES WAS PRESENTED AS ILLUSTRATED IN THE THREE CASES CITED BELOW:

In the Archbald case, votes were taken on thirteen articles of impeachment. He was convicted on five of the thirteen, and each time, following the vote on the five articles on which he was convicted, the Presiding Officer made his announcement, as illustrated below:

> The President pro tempore announced that upon the thirteenth article of impeachment 42 Senators had voted "guilty" and 20 Senators had voted "not guilty." More than two-thirds of the Senators present having voted "guilty," the respondent, Robert W. Archbald, stood convicted of the charges in said thirteenth article.[289]

Following the vote on all thirteen articles of impeachment, Senator James A. O'Gorman of New York introduced the following resolution:

> *Ordered,* That the respondent, Robert W. Archbald, circuit judge of the United States from the third judicial circuit and designated to serve in the Commerce Court, be removed from office and be forever disqualified from holding and enjoying any office of honor, trust, or profit under the United States.[290]

A division was demanded and the first part of the resolution, which simply pronounced the judgment that Judge Archbald be removed from office, was agreed to by voice vote. A yea and nay vote was ordered on the second portion providing that he be forever disqualified from holding office under the United States, and this was adopted also.

At this point the President pro tempore pronounced the judgment of the Senate as follows:

> The Senate therefore do order and decree, and it is hereby adjudged, that the respondent Robert W. Archbald, circuit judge of the United States from the third judicial circuit, and designated to serve in the Commerce Court, be, and he is hereby, removed from office; and that he be and is hereby forever disqualified to hold and enjoy any office of honor, trust, or profit under the United States.[291]

And it was further resolved that

> . . . the Secretary be directed to communicate to the President of the United States and to the House of Representatives

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[289] January 13, 1913, 62–3, *Senate Journal,* p. 332.
[290] January 13, 1913, 62–3, *Senate Journal,* p. 332.
[291] January 13, 1913, 62–3, *Senate Journal,* p. 332.

> the foregoing order and judgment of the Senate and transmit a certified copy of the same to each.[292]

Whereupon the Senate sitting as a court of impeachment adjourned *sine die.*

In the trial of Andrew Johnson, having voted on three articles without securing conviction on any, motion was made that the Senate sitting for the trial of the President adjourn *sine die,* and a yea and nay vote was taken. Before announcing the result, however, the Chief Justice reminded the Senate that the rule provides that "if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered," [293] and after an interruption by a Senator who suggested "that that was done when the President of the Senate declared the acquittal upon each article," the Chief Justice continued:

> That is not the judgment of the Senate; but if there be no objection, the judgment will be entered by the Clerk.

The Presiding Officer then stated:

> The Clerk will enter, if there be no objection, a judgment according to the rules—a judgment of acquittal.[294]

The Journal's description follows:

> The Senate having tried Andrew Johnson, President of the United States, upon articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained in the second, third, and eleventh articles of impeachment, it is therefore
>
> *Ordered and adjudged,* That the said Andrew Johnson, President of the United States, be, and he is, acquitted of the charges in said articles made and set forth.
>
> The Chief Justice then announced the vote on the motion of Mr. Williams to be yeas 34, nays 16; And, thereupon, declared the Senate, sitting as a court of impeachment for the trial of Andrew Johnson, President of the United States, upon articles of impeachment exhibited against him by the House of Representatives, adjourned without day.[295]

For other cases of pronouncing judgment, see also June 26, 1862, 37-2 *Senate Journal,* p. 904; July 31, 1876, 44-1, *Senate Journal,* p. 1012; January 31, 1831, 21-2, *Senate Journal,* p. 341; February 27, 1905, 58-3, *Senate Journal,* p. 369.

In the trial of Halsted L. Ritter in 1936, following the vote on the seventh and last article of impeachment, the only article on which he was convicted, the President pro tempore made the following statement:

> The PRESIDENT PRO TEMPORE. On the seventh article of impeachment, 56 Senators have voted "guilty" and 28 Senators have voted "not guilty." Two-thirds of the members present having voted "guilty," the Senate adjudges the respondent guilty as charged in this article.[296]

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[292] *Ibid.*

[293] May 26, 1868, 40-2, *Congressional Globe Supplement,* p. 415.

[294] *Ibid.*

[295] May 26, 1868, 40-2, *Senate Journal,* p. 951.

[296] April 17, 1936, 74-2, *Record,* p. 5606.

At this point, Senator Henry Ashurst, of Arizona, sent to the desk an order for judgment, providing that:

> *Ordered,* That the respondent, Halsted L. Ritter, United States district judge for the southern district of Florida, be removed from office.[297]

The following colloquy then occurred:

The **President pro tempore**. Are the yeas and nays desired on the question of agreeing to the order?

Mr. **Ashurst**. The yeas and nays are not necessary.

Mr. **Johnson**. Mr. President, how, affirmatively, do we adopt the order, unless it is put before the Senate, and unless the roll be called upon it or the Senate otherwise votes?

The **President pro tempore**. The Chair is of the opinion that the order would follow the final vote as a matter of course, and no vote is required.

Mr. **Ashurst**. Mr. President, the vote of guilty, in and of itself, is sufficient without the order, under the Constitution, but to be precisely formal I have presented the order, in accordance with established precedent, and I ask for a vote on its adoption.

Mr. **Hastings**. Mr. President, will the Senator yield?

Mr. **Ashurst**. I yield.

Mr. **Hastings**. Just what is the language in the Constitution as to what necessarily follows conviction on an article of impeachment?

Mr. **McGill**. It is found in section 4, article II, of the Constitution.

Mr. **Hastings**. What is the language of the Constitution which makes removal from office necessary, and to follow as a matter of course?

Mr. **McGill**. Mr. President——

Mr. **Ashurst**. If the Senator from Kansas has the reference, I shall ask him to read it.

Mr. **McGill**. Section 4 of article II of the Constitution reads:

> The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

Mr. **Hastings**. I thank the Senator. Then may I suggest was not the Chair correct in the first instance? Does not the removal from office follow without any vote of the Senate?

The **President pro tempore**. That was the opinion of the Chair.

Mr. **Hastings**. I think the President pro tempore was correct.

The **President pro tempore**. The Chair will then direct that the order be entered.

Mr. **Norris**. Mr. President, upon the action of the Senate why does not the Chair make the proper declaration without anything further?

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[297] April 17, 1936, 74-2, *Record*, p. 5607.

The PRESIDENT PRO TEMPORE. The Chair was about to do so. The Chair directs judgment to be entered in accordance with the vote of the Senate as follows:

JUDGMENT

> The Senate having tried Halsted L. Ritter, United States district judge for the southern district of Florida, upon seven separate articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present having found him guilty of charges contained therein: It is therefore
>
> *Ordered and adjudged,* That the said Halsted L. Ritter be, and he is hereby, removed from office.[298]

On the final question as to whether an impeachment is sustained, the yeas and nays are taken on each article separately, and if an impeachment is not sustained by a two-thirds vote on any article, a judgment of acquittal shall be entered. If on the other hand, the respondent be convicted by a two-thirds vote on any article, the Senate shall pronounce judgment and a certified copy of the judgment is deposited with the Secretary of State (Rule XXIII).

At the conclusion of the trial of Judge Louderback in 1933, the Vice President made the following statement:

> The Senate having tried Harold Louderback, judge of the District Court of the United States for the Northern District of California, upon five articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein: It is therefore
>
> *Ordered and adjudged,* That the said Harold Louderback be, and he is acquitted of all the charges in said articles made and set forth.[299]

All Articles Need Not Be Voted On:

A previous provision in Rule XXIII reads:

> ". . . but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment and a certified copy of such judgment shall be deposited in the office of the Secretary of State." The Senate substituted the following in adopting S. Res. 479, 99th Congress, 2d Session, on August 16, 1986.
>
> ". . . but if the person impeached shall be convicted upon any such article by votes of two-thirds of the members present the Senate may proceed to the consideration of such other matters as may be determined to be appropriate prior to pronouncing judgment. Upon pronouncing judgment, a certified copy of such judgment shall be deposited in the office of the Secretary of State."

The previous text of Impeachment Rule XXIII virtually required the Senate to enter judgment if the person impeached

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[298] April 17, 1936, 74-2, *Journal,* p. 512.

[299] May 24, 1933, 73-1, *Senate Journal,* p. 344.

". . . be convicted upon . . . articles by the vote of two-thirds of the members present." Under terms of the new provision the Senate may take up such matters as the desirability of voting on all of the articles after conviction on one of them before entering a judgment conviction. It is expected that flexibility allowed by the change will expedite the proceedings. Since under the prevailing view a two-thirds vote to convict on any article operates as an automatic removal from office, the Senate may not wish to vote the other articles. Also, it is contemplated that the Senate, in the interval allowed by this new version of the rule, may wish to consider whether or not to vote the additional consequence provided by the Constitution in the case of an impeached and convicted civil officer, viz: permanent disqualification from elected or appointive office. (Senate Report 99–401: 99th Congress, 2d Session.)

Motion To Reconsider Not In Order:

Senate adoption of S. Res. 479, 99th Congress, 2d Session, on August 16, 1986, added a new sentence at the end of Rule XXXIII providing that "A motion to reconsider the vote by which any article of impeachment is sustained or rejected shall not be in order." The purpose of this restriction is to obviate the confusion that would invariably attend a reversal of a vote to convict when, according to most authorities, such a vote operates automatically and instantaneously to separate the person impeached from the office. Under ordinary circumstances the Senate has two days for reconsideration. Since the trial rules are silent with respect to a motion to reconsider, the rules of the Senate applicable to legislative matters would apply. Consequently, the effect of this change is to preclude the operation of the normal rule in the context of a vote on the final question, whether such vote is to convict or to acquit. (Senate Report 99–401: 99th Congress, 2d Session.)

7. Following the Verdict of Guilty or Not Guilty, or the Pronouncement of Judgment, and the Disposition of the Disqualification From Holding Office of Trust or Profit, If Presented, the Senate Sitting as a Court of Impeachment Adjourned *Sine Die.*

In the Johnson trial, following the vote on three of the articles of impeachment, and without voting on the other eight, the Senate adjourned *sine die*. Note the following extract from the *Journal:*

> The Chief Justice announced that upon this article thirty-five senators had voted "guilty," and nineteen senators had voted "not guilty," and delcared that two-thirds of the senators present not having pronounced him guilty, Andrew Johnson, President of the United States, Stood acquitted of the charges contained in the third article.
>
> Thereupon
>
> Mr. Williams moved that the Senate sitting for the trial of the President upon articles of impeachment do not adjourn without day.

> On the question to agree to the motion, Mr. Williams asked that the question be taken by yeas and nays; and the yeas and nays being desired by one-fifth of the senators present.
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> * * * * * * *
>
> The Chief Justice stated that before announcing the result of the vote just taken, he desired to call the attention of the Senate to the 22d rule, which provides that "if that impeachment shall not, upon any of the article presented, be sustained by the votes of two-thirds of the members present," a judgement of acquittal shall be entered; and that if not objected to, he would direct the Secretary to enter a judgement of acquittal according to this rule; and
>
> Not objection being made, the Secretary, by direction of the Chief Justice, entered the judgement of the Senate upon the second, third, and eleventh articles, as follows:
>
> The Senate having tried Andrew Johnson, President of the United States, upon articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the senators present not having found him guilty of the charges contained in the second, third, and eleventh articles of impeachment, it is therefore
>
> *Ordered and adjudged,* That the said Andrew Johnson, President of the United States be, and he is, acquitted of the charges in said articles made and set forth.
>
> The Chief Justice then announced the vote on the motion of Mr. Williams to be yeas 34, nays 16;
>
> And, thereupon,
>
> Declared the Senate, sitting as a court of impeachment for the trial of Andrew Johnson, President of the United States, upon articles of impeachment exhibited against him by the House of Representatives, adjouned without day.[300]

In the Louderback and Ritter trials, all of the articles of impeachment were voted on and the judgement of the Senate pronounced before a motion was made to adjourn sine die as follows. In the Louderback trial:

> No objection being made, the Vice President entered the following judgment of acquittal:
>
> The Senate having tried Harold Louderback, judge of the District Court of the United States for the Northern District of California, upon five several articles of impeachment exhibited against him by the House of Representatives, and two thirds of the Senators present not having found him guilty of the charges contained therein: It is therefore
>
> *Ordered and adjudged,* That the said Harold Louderback be, and he is, acquitted of all the charges in said articles made and set forth.
>
> On motion by Mr. Ashurst, at 6 o'clock and 5 minutes p.m.,
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> The Senate, sitting for the impeachment trial aforesaid, adjourned sine die.[301]

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[300] May 26, 1868, 40.2, *Senate Journal,* pp. 950–51.

[301] May 24, 1933, 73–1. *Senate Journal,* p. 344.

In the Ritter trial, after agreeing to the seventh article by a two-thirds vote, the only article on which he was convicted, the following occurred:

JUDGMENT

The Senate having tried Halsted L. Ritter, United States district judge for the southern district of Florida, upon seven separate articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present having found him guilty of charges contained therein: It is therefore

Ordered and adjudged, That the said Halsted L. Ritter be, and he is hereby, removed from office.

Mr. Ashurst submitted the following supplemental order:

Ordered further, That the respondent, Halsted L. Ritter, United States district judge for the southern district of Florida, be forever disqualified from holding and enjoying any office of honor, trust, or profit under the United States.

The President pro tempore, in response to a parliamentary inquiry by Mr. Hastings if the question were not debatable, held that the rules governing impeachment proceedings required that all orders or decisions should be determined without debate, but that the yeas and nays might be ordered.

Mr. Duffy submitted a parliamentary inqury whether a majority or a two-thirds vote was required to adopt the order.

Mr. Ashurst thereupon said: "Mr. President, in reply to the inquiry, I may say that in the Archbald case that very question arose. A Senator asked that a question be divided, and on the second part of the order, which was identical with the order now proposed, the yeas and nays were ordered, and the result was yeas 39, nays 35, so the order further disqualifying respondent from holding any office of honor, trust, or profit under the United States was entered. It requires only a majority vote."

The question then being taken on agreeing to the proposed order,

It was determined in the negative,

Yeas -------------- 0
Nays --------------- 76

* * * * * * *

So the order was not agreed to.

Mr. Ashurst submitted the following order, which was considered and agreed to:

Ordered, That the Secretary be directed to communicate to the President of the United States and to the House of Representatives the order and judgment of the Senate in the case of Halsted L. Ritter and transmit a certified copy of same to each.

On motion by Mr. Ashurst, at 1 o'clock and 50 minutes p.m.,

The Senate, sitting for the trial of the impeachment of Halsted L. Ritter, United States district judge for the southern district of Florida, adjourned sine die.[302]

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[302] April 17, 1936, 74-2, *Senate Journal,* p. 512.

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